Supreme Court, U.S.
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No._____

In The
Supreme Court of the United States

LIVINGSTON DOWNS RACING ASSOCIATION, INC.
Petitioner,

v.

LOUISIANA STATE RACING COMMISSION
Respondent.

On Petition For Writ Of Certiorari To the Supreme Court Of The State Of Louisiana

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PETITION FOR WRIT OF CERTIORARI

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27-1PP

QUESTIONS PRESENTED

1. May a state agency revoke a license to operate a business without notice, without a hearing, without giving the license holder an opportunity to defend and without complying with the procedural due process rights granted the license holder by state law?
2. Is due process violated when the administrative agency does not conduct a hearing and the state court does not conduct a trial de novo as required by state law?
3. Is due process violated in the course of judicial review of an agency's actions when the judicial decisions are based upon an incomplete record which does not contain reasoned findings of fact, conclusions of law or substantial evidence to support the decisions made?
4. Is the right to free access to the courts violated when the court refuses to allow a party to participate in the proceeding and present evidence?
5. Is it a denial of equal protection when a state statute which undertakes to regulate a lawful business by conferring upon a commission or board the authority, within the commission or board's judgment or discretion, to grant or withhold a license or permit to engage in a business where the statute does not prescribe a rule or standard to which all persons similarly situated may conform?

PARTIES TO THE PROCEEDINGS

The following were parties to the proceedings in the Supreme Court of the State of Louisiana:

1. Livingston Downs Racing Association, Inc. (Appellant)
2. Louisiana State Racing Commission (Appellee)

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The opinion of the Louisiana Supreme Court is not reported. It is included in the Appendices as Appendix A. The Louisiana Fourth Circuit Court of Appeal's denial of petitioner's application for rehearing is included in the Appendices as Appendix B. The decision of the Louisiana Fourth Circuit Court of Appeal is reported as Jefferson Downs Racing Association v. State Racing Association, 99-1001 (La. App. 4th Cir. 2/16/00). It is included in the Appendices as Appendix D. The decision of the Civil District Court for the Parish of Orleans is not reported. It is included in the Appendices as Appendix H.

JURISDICTION

The judgment of the Louisiana Supreme Court denying the petitioner's application for supervisory writs was entered on May 26, 2000. This Petition for Writ of Certiorari is being filed within 90 days of that date. The jurisdiction is being invoked under 28 U.S.C. §1257.

STATUTORY PROVISIONS INVOLVED

Constitution of the United States

AMENDMENT FOURTEEN

Section 1. Citizens of the United States. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any persons of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

REASONS FOR GRANTING THE WRIT

In the interest of justice, this Honorable Court should grant this petition for writ of certiorari because the Louisiana Supreme Court has decided important questions of federal law in a way that conflicts with relevant decisions of this Honorable Court.

STATEMENT OF THE CASE

A. Preliminary Statement

Why should this Honorable Court grant this writ to decide the fate of a license for a race track? This writ is necessary to redress a state agency's blatant trampling of a private citizen's rights of due process and equal protection under the U. S. Constitution. The trampling occurred as a result of collusion between the regulatory agency and powerful private gambling interests. The fingerprints of corruption are all over this case.

Wagering on horse races is one of the oldest and most widely accepted legal forms of wagering. The recent building of new racetracks, off-track, intertrack and telephone wagering is legal in most states. The industry has grown into a multi-billion dollar segment of interstate commerce. The protection of the constitutional rights of those private citizens participating in this industry is of growing national importance. The actions of the Louisiana State Racing Commission should not be allowed to set the standard of conduct on the issue of due process and equal protection under the law.

This case presents substantive and procedural due process issues as well as denial of equal protection under state and federal law.

B. Statement of Facts

On December 10, 1992, the Commission granted to LDRA a racing association permit/license pursuant to LSA-R.S. 4:159 and R.S. 4:181. The awarding of the December 10, 1992 license/permit to LDRA was only step one in a process which required LDRA to apply for further licensing by the Commission before it could operate a race track and on site other track wagering/simulcasting. This first step enabled LDRA to apply for a referendum in Livingston Parish for approval by the voters of whether or not the business of horse racing would be conducted in

Livingston Parish with pari-mutuel wagering thereon. The proposition was approved by the voters of Livingston Parish by a wide margin.

On December 11, 1992 the four existing racing associations licensed by the Commission along with a nonlicensed racing association filed a Petition for Judicial Review against the Commission to annul and/or set aside the LDRA permit/license. The petition for judicial review was filed in the Civil District Court for the Parish of Orleans, State of Louisiana, Suit #92-20961, Division "G," allotted to the Honorable Robin Giarrusso. The four licensed racing associations were Fair Grounds Corporation, Louisiana Downs, Inc., New Evangeline Downs and Delta Downs, Inc. The nonlicensed racing association was Jefferson Downs Corporation, which voluntarily forfeited its racing license in November 1992. This was the first of three lawsuits attempting to stop and/or annul the Livingston Parish referendum.

In Suit No. 92-20961, Judge Giarrusso consistently ruled against LDRA and in favor of the plaintiffs. Judge Giarrusso ordered that "the decision of the Louisiana State Racing Commission of December 10, 1992 granting to Livingston Downs Racing Association, Inc. a license to conduct race meetings in the Parish of Livingston is reversed . . . the license is hereby vacated and recalled." This decision was appealed to the Louisiana Fourth Circuit Court of Appeal, which reversed Judge Giarrusso's decision and upheld the validity of LDRA's license. This became a final judgment in these proceedings as the plaintiffs filed no further appeals within the time delays afforded by law.

The Louisiana statutory scheme to regulate the racing industry centers around LSA-R.S. 4:147(1)(a), which prohibits racing with the same or overlapping racing dates within a 100-mile radius of any race tracks.

La.R.S. 4:211, et seq. governs the authorization, establishment, ownership and management of off-track wagering facilities. Pursuant to La.R.S. 4:211, et seq., only

those race tracks conducting race meetings during the 1986-87 racing season and licensed prior to June 30, 1987 may be licensed to own and/or operate off-track wagering facilities in Louisiana. Similar to the statutory 100-mile radius rule for race tracks, off-track wagering facilities are statutorily controlled by a 55-mile radius, measured from the parish seat in the parish where the off-track wagering facility is located. La.R.S. 4:215(b) provides a formula for general ownership of off-track wagering facilities when more than one live racing facility is located less than 55 miles from the parish seat in the parish which they are located. La.R.S. 4:215(c) provides for ownership of off-track wagering facilities in parishes whose parish seat is 55 miles or more from the live racing facility. However, the right to operate as an on site off-track wagering/simulcasting facility is governed by LSA-R.S. 4:149.2. This enables a racing facility to simulcast live races from other areas at its main racing facility and accept pari-mutuel wagering thereon.

The LDRA site in Livingston Parish which was approved by the Commission is located within the 100-mile radius for live racing and the 55-mile radius for off-track wagering parlors formerly shared by Jefferson Downs and the Fair Grounds. LDRA would replace the live racing days lost by the closure of Jefferson Downs and the forfeiture of its racing license. Jefferson Downs, which was wholly owned by Bryan and Marie Krantz, was closed after the Krantzs purchased the controlling interest in the Fair Grounds. When the Krantzs purchased the Fair Grounds, Jefferson Downs was the only competition in the statutorily defined market area.

It has been established by racing industry experts that a race track cannot survive or be economically feasible without the assistance of other track wagering/simulcasting. All other race tracks operating in Louisiana were granted the right pursuant to R.S. 4:149.2 to operate their main facilities as on-site off-track wagering parlors. However, the

Commission not only denied this right to LDRA but refused to address the matter in open meeting.

Within 77 days after LDRA was granted its initial permit/license, the Krantz family gambling interests (which includes Bryan Krantz, Marie Krantz, Fair Grounds Corporation, Jefferson Downs Corporation, Finish Line Management, Inc. and *incredibly*, the Committee to Control Gambling, Inc.) initiated three separate lawsuits filed in two different parishes to stop and/or impede the referendum required by law before LDRA could construct its project. All three suits were eventually resolved in favor of LDRA and dismissed.

In order to preserve its yearly racing season, new racing associations must apply for and obtain specific race dates even during its construction and development phases in order to protect those dates. LDRA filed its application to the Commission for a 10-year racing license to conduct specific racing dates in September 1993 through April 1994 and requested to be placed on the January 21, 1993 Commission meeting agenda. The Commission made no reply to these requests by LDRA and this item was not placed on the agenda of the Commission meeting nor was it heard at the January 21, 1993 meeting. The same request was filed on January 29, 1993 and again on March 11, 1993. LDRA received no response from the Commission.

On March 22, 1993 LDRA filed its third formal application for a 10-year racing license to conduct specific race dates in September 1993 through April 1994 to be placed on the April 15, 1993 Commission meeting agenda. It was placed on the agenda. When the issue of LDRA's license was taken up, Ms. Tucker, Assistant Attorney General assigned to the Commission, read into the record that if LDRA was granted its license and racing dates LDRA could have a legal challenge to claim a share of the Jefferson Downs off-track betting parlors. The Commission then deferred action on LDRA's application without reason and LDRA was told to reapply in May.

The Commission finally acted on LDRA's application and awarded LDRA a 10-year license to conduct a race meet and specific race dates on May 27, 1993, only after LDRA filed a writ of mandamus, Suit #93-8567, Civil District Court for the Parish of Orleans. The issue of whether LDRA was entitled to operate off-track betting parlors (those located off-site as opposed to other track wagering authorized pursuant to LSA-R.S. 4:149.2 at a racing association's main facility) was decided in a separate declaratory judgment proceeding entitled Livingston Downs Racing Association, Inc. v. State Through Edwards, Suit No. 399,563, 19th Judicial District Court, East Baton Rouge Parish.

On April 29, 1994, the Commission suspended and/or revoked LDRA's license, and/or terminated the racing privileges granted to LDRA. This was done without affording LDRA any notice whatsoever of the Commission's intent to consider or take such action. This included a failure to provide the required "Bertucci" hearing established by Louisiana jurisprudence and in noncompliance with the Administrative Procedure Act, more specifically LSA-R.S. 49:955 and 49:961(C). Louisiana State Board of Medical Examiners v. Bertucci, 593 So.2d 798, (La.App. 4th Cir. 1992). LDRA objected on the record at the Commission meeting of the failure to afford it notice of or a "Bertucci" hearing Louisiana law requires.

LDRA immediately thereafter filed a Motion for Trial de Novo and Suspensive Appeal pursuant to LSA-R.S. 4:158(A). The case was initially filed in the Parish of LDRA's domicile, Livingston Parish pursuant to LSA-R.S. 4:158(A) and docketed as Suit No. 71,137. The Commission subsequently excepted to the venue. The District Court and the Louisiana First Circuit Court of Appeal denied the exception of venue. The Louisiana Supreme Court, however, transferred the case to the Orleans Parish Civil District Court. LDRA's petition for rehearing was denied by the Louisiana Supreme Court. This case was transfer to Orleans Parish and docketed in the Civil District Court for the Parish of Orleans

as Suit No. 95-15331, Division J. Subsequently, purportedly pursuant to a Local Rule 7 of the Orleans Parish Civil District Court, the case was transferred to the Honorable Robin Giarrusso on ex parte motion of Salvador Anzelmo, counsel for the racetracks in Suit No. 92-20961, and consolidated with Suit No. 92-20961, which had been concluded for over a year.

On motion of the Commission, Judge Giarrusso, without benefit of the administrative record, dismissed the suspensive appeal. (***See Appendix I***). LDRA filed a writ of certiorari with the Louisiana Fourth Circuit Court of Appeal which reversed and set aside Judge Giarrusso's ruling and remanded the case to the trial court for proceedings in accordance with LSA-R.S. 4:158. (***See Appendix J***). The Louisiana Supreme Court denied the Commission's application for supervisory writs. (***See Appendix K***).

On August 30, 1996 LDRA named current and former Commission members, Albert Stall, Oscar Tolmas, Payton Covington, W. C. Littleton and James Ben Thomas, together with Melinda Tucker, former attorney for the Commission, as defendants in a suit filed in U.S. District Court, Middle District of Louisiana captioned *Livingston Downs Racing Association, Inc. v. Jefferson Downs Corporation, et al.*, Civil Action No. 96-3430-C-M1. Among the allegations contained in the petition were conspiracy to violate antitrust, restraint of trade and §1983 Civil Rights violations for illegal actions under color of state law. (See ***Appendix O***).

Shortly thereafter, the Commission defendants approached LDRA to discuss a resolution of the issues. LDRA's desire was to move forward with its efforts to build its race track project. The Commission and LDRA negotiated the consent judgment, and in return LDRA dismissed the Commission defendants from the federal lawsuit.

On November 15, 1996 the parties entered into a consent judgment (hereinafter referred to as the "consent judgment") approved by the trial court. (See *Appendix N.*)

Had the parties not entered into the consent judgment, the issue of the license revocation would have proceeded to trial on the merits in Judge Giarrusso's court. The record and law clearly supports LDRA's position. Furthermore, the Commission would have faced an expensive trial in federal court, with significant exposure to personal monetary damages. LDRA negotiated the consent judgment in good faith. It is now apparent that the Commission members, on the other hand, secured a release to their benefit and simply waited for the appropriate time and opportunity to again work in conjunction with other federal defendants to keep LDRA from building its race track project. The Commission's actions are purely retaliatory to punish LDRA for daring to stand up for its constitutionally protected rights of due process and equal protection.

Of the three lawsuits that were originally initiated after LDRA's permit/license was issued, the final suit, entitled "Terrence Lee Odom v. Livingston Parish Police Jury," Suit No. 68,130, Division "F," 21st Judicial District Court, Livingston Parish was dismissed with prejudice on August 18, 1998. The Odom litigation, which was admittedly initiated and financed by the Krantz family gambling interests, succeeded in constituting the major impediment to LDRA obtaining a financing commitment. This litigation attacked the local election in Livingston Parish which was and remains the foundation of the authorization of live horse racing in Livingston Parish.

As soon as the dismissal was ordered in the Odom litigation, LDRA sent a written request to the Commission for an extension of the October 31, 1998 deadline contained in the consent judgment. On September 17, 1998 the Commission advised counsel for LDRA that the Commission was presently scheduled to hold a meeting in Bossier City on September 26, 1998. The letter further stated that LDRA had

not been placed on the agenda of the Commission's September 26, 1998 meeting; however, the Commission was expected to adjourn to executive session to discuss pending litigation which would include LDRA's request for modification of the consent judgment by extension of the October 31, 1998 deadline.

The Commission purportedly held the meeting on Saturday, September 26, 1998. The Commission adjourned into executive session at which time LDRA's request for extension of the deadline was purportedly discussed. However, the Commission did not formally resume its open meeting and conduct a vote in open meeting upon the action, if any, it advocated in executive session. The Commission did not issue any formal ruling of its action. This is in violation of the Administrative Procedure Act.

The Commission has failed to produce to the Court any transcript of the September 26, 1998 meeting allegedly held by it and has failed to issue any formal ruling by vote of the full commission on LDRA's request for an extension. (See ***Appendix P***) LDRA did not receive any notification of the Commission's actions until October 22, 1998 and this was only after counsel for LDRA on October 5, 1998, sent correspondence requesting notification by the Commission. On Friday, October 30, 1998 at 9:35 a.m. LDRA hand delivered an application for specific race dates with an attached financing commitment to the Commission office in New Orleans, Louisiana and the required $5,000.00 deposit in the form of a cashier's check. LDRA did not receive any communication whatsoever from the Commission regarding the sufficiency or insufficiency of the commitment it presented. The Commission did not hold an open meeting to accept or reject said application for specific dates with the attached financing commitment as required by LSA-R.S. 4:151, et seq. To date, the Commission has not returned the $5,000.00 deposit submitted by LDRA which must be a part of the application. More specifically, LSA-R.S. 4:158 provides that "the Commission shall convene to consider the

refusal or granting of the permits or licenses applied for." The manner in which the Commission can convene is dictated by LSA-R.S. 42:4.2, et seq. (the Open Meetings Law) and 49:961, et seq. (the Administrative Procedure Act). The Commission took absolutely no action whatsoever. This is in direct violation of the Administrative Procedure Act, is in bad faith, violates the consent judgment and violates LDRA's due process rights under Article I Section III of the Louisiana Constitution of 1974 and the Fourteenth Amendment to the United States Constitution.

On November 10, 1998 the Commission filed a motion and order to show cause why its motion to dismiss filed in the instant case should not be granted. Although LDRA has five counsel of record listed in this action, counsel for the Commission forwarded a copy of its motion only to one who was not lead counsel. Said notice was not received in his office until November 13, 1998. The Commission received LDRA's commitment letter timely. However, the Commission has not even acknowledged receipt of said commitment (other than date and time stamp by its Executive Director on October 30, 1998) or advised LDRA or its lender as to any problems it may perceive with said commitment. LDRA's lender, Remington Financial Group, Inc. ("RFG"), on November 18, 1998 advised the Commission "that our firm is prepared and willing to make certain modifications or changes to the commitment, provided the overall integrity of the document remains intact." The Commission made no to RFG's communication. The Commission simply, in bad faith, breached its agreement with LDRA.

On November 18, 1998, LDRA filed a motion to continue the hearing on the Commission's motion to dismiss. The court sent no formal notification to counsel for LDRA as to whether the motion had been granted or denied. Counsel for LDRA attempted to contact Judge Giarrusso's docket clerk on Monday, November 30, 1998 and was informed that said clerk was ill and was advised to leave a message. On the morning of Tuesday, December 1, 1998 counsel for

LDRA again contacted Judge Giarusso's office and was advised by "Pete" that the judge remembered denying said motion. Counsel for LDRA requested a copy of the denial and was informed that it could not be located. However, the court did graciously extend LDRA's time to file its opposition by one day and advise that LDRA would be allowed oral argument on the motion.

Although the motion to dismiss filed by the Commission was scheduled for contradictory hearing on December 4, 1998, a contradictory hearing did not take place. Despite the fact numerous exceptions were filed by LDRA, along with a petition for writ of mandamus and a motion to enforce section 16 of the consent judgment, the hearing lasted less than ten minutes. After a brief opening statement by counsel for the Commission, Judge Giarrusso recognized Mr. Victor Sachse, III, counsel for LDRA. Mr. Sachse noted that Mr. Paul Burgess, Executive Director of the Commission, and Ms. Kim Chatelain, counsel for the Commission, were present. Mr. Sachse attempted to these two parties as witnesses to testify that there had been no official action taken by the Commission which authorized the filing of the subject motion to dismiss. Judge Giarrusso refused stating that she was granting the motion to dismiss and refused to allow the introduction, or even the proffer, of any evidence. Judge Giarrusso advised Ms. Chatelain to draw up the order and that she would sign the order the same day. Gavel down, hearing over, order signed within hours. The court did not record and, therefore, could not provide a transcript of this hearing.

The trial court's refusal to permit LDRA to participate in a proceeding in open court and to present its case constitutes denial of due process under both the U.S. and La. Constitutions. It also constitutes denial of LDRA's right to free access to the courts under La. Const. Art. 1, Section 22. LDRA attempted to introduce evidence to preserve the record to the trial court at the hearing of this matter and was not allowed to do so. Although an incomplete record will not

necessarily be a violation of Art. 1, Sect. 19, the jurisprudence is clear that where a party's right of review is prejudiced, not by his own act or omission, but by the failure of a court to protect that right, then the party's rights under Art. 1 Section 19 are violated.

LDRA filed three separate motions requesting that the Court of Appeal direct the Clerk of Court for the Parish of Orleans to complete the record on appeal, all of which are a part of the appellate record. The Court of Appeal twice ordered the appellate record supplemented. However, at noon on November 5, 1999, the last return date given to the Civil District Clerk to correctly and completely supplement the record, the record still did not contain even the pleadings related to the trial court's dismissal of this action. The same day, undersigned counsel filed its third motion requesting that the Court of Appeal direct the Civil District Clerk to complete the appellate record and also filed a motion to withhold submission of the case until the record was complete. At the oral argument before the Court of Appeal, the panel stated that it would address the matter of the incomplete record at a later date. Undersigned counsel never received any notification that the motions were acted upon. The pleadings missing from the record which are absolutely essential to the just adjudication of this matter and specifically germane to the motion to dismiss filed by the Commission which was the subject of the petitioner's appeal to the Louisiana Fourth Circuit Court of Appeal are enumerated in the Fourth Circuit's Second Order to Complete the Record on Appeal. (See ***Appendix F***). The Civil District Clerk failed to even supplement the record with these seventeen documents which are required for the trial court, the appeal court, the Louisiana Supreme Court and this Honorable Court to render a decision.

Moreover, the administrative record of the April 29, 1994 Commission meeting which is the subject of this lawsuit, is still far from complete. The record does not contain all of the pleadings filed by LDRA with the

Commission. Not only does it not contain LDRA's requests to the Commission to have witnesses subpoenaed or documentation of the Commission's blatant refusal to do so, but also does not contain nine Commission meeting transcripts which were proffered into the record by the Commission's own attorney at the April 29th meeting. (See ***Appendix M, pages 83m***). LDRA even offered, in both its second and third motions to complete the record, to provide legible copies of all pleadings to either the trial court or to the appellate court, if necessary. (***See Appendix M***).

LDRA has made every attempt to have a complete record before this Court. (***See Appendices E, F and G***). Without a complete record, LDRA's due process rights are being violated.

C. Procedural History

On April 24, 1994, the Commission revoked LDRA's permit/license. LDRA filed a petition for suspensive appeal and for a trial de novo on April 29, 1994 within minutes of the Commission's revocation of its license. The case was initially filed in the Parish of LDRA's domicile, Livingston Parish pursuant to LSA-R.S. 4:158(A) and docketed as Suit No. 71,137. The Commission subsequently excepted to the venue. The Livingston Parish District Court denied the Commission exception of venue, the Louisiana First Circuit Court of Appeal affirmed, Docket No. 94-CW-2229. The Louisiana Supreme Court, however, transferred the case to the Orleans Parish Civil District Court. LDRA filed a petition for rehearing with the Louisiana Supreme Court which was denied. The case was docketed in the Civil District Court for the Parish of Orleans as Suit No. 95-15331, Division J. Subsequently, purportedly pursuant to a Local Rule 7 of the Orleans Parish Civil District Court, the case was transferred to the Honorable Robin Giarrusso on ex parte motion of Salvador Anzelmo, counsel for the racetracks in Suit No. 92-20961, and consolidated with Suit No. 92-20961, which had been concluded for over a year. All subsequent

litigation filed by LDRA in the Orleans Civil District Court has subsequently been transferred and consolidated with Suit No. 92-20961.

The Commission filed a motion to dismiss which was granted by Judge Giarrusso on April 26, 1996, but subsequently overturned by the Louisiana Fourth Circuit Court of Appeal. The parties entered into a consent judgment in this matter on November 15, 1996. On motion of the Commission, the Orleans Civil District Court dismissed this action on December 4, 1998. LDRA filed an appeal with the Fourth Circuit Court of Appeal which affirmed the trial court judgment without a complete record and denied petitioner's application for rehearing, Docket No. 99-CA-1001 c/w 99-CA-1002. The Louisiana Supreme Court denied petitioner's application for supervisory writs, Docket No. 00-C-1067.

ARGUMENT

A. Denial of Due Process

The issue is not whether the procedural safeguards put into place by the State of Louisiana to prevent governmental deprivation of property without due process of law are insufficient. Rather, the issue is whether LDRA was deprived of its license to operate a race track as a direct result of the Commission's refusal to abide by those procedural safeguards and by the Louisiana state court's failure to comply with the requirements for judicial review that comports with due process.

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law . . . ." This clause imposes procedural constraints on governmental entities to prevent citizens from being mistakenly or unjustifiably deprived of their interests which are classified as property within the meaning of the Due Process Clause. Although the underlying substantive interest, or "property "

is created by "an independent source such as state law," federal constitutional law determines whether that interest rises to the level of a "legitimate claim of entitlement" protected by the Due Process Clause. Memphis Light, Gas & Water Div. Vs. Craft, 436 U.S. 1, 98 S.Ct. 1554, 56 L.Ed.2d 30 (1978); Mathews v. Eldridge, 424 U.S. 319, 344, 96 S.Ct. 893, 907, 47 L.Ed2d 18 (1976); Board of Regents v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972); Perry v. Sindermann, 408 U.S. 593, 602, 92 S.Ct. 2694, 2700, 33 L.Ed.2d 570 (1972).

The hallmark of property is an individual entitlement grounded in state law, which cannot be removed except "for cause." Logan v. Zimmerman Brush Co., 455 U.S. 422, 428, 102 S.Ct. 1148, 1153, 71 L.Ed.2d 265 (1982); Barry v. Barchi, 443 U.S. 55, 99 S.Ct. 2642, 61 L.Ed.2d 365 (1979); Memphis Light, Gas & Water Div. v. Craft, supra; Goss v. Lopez, 419 U.S. 565, 573-574, 95 S.Ct. 729, 735-736, 42 L.Ed.2d 725 (1975); Board of Regents v. Roth, supra.

Once the determination is made that the individual entitlement is one that cannot be removed except "for cause" then the issue becomes what one of process due. As Justice Jackson observed in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 656, 94 L.Ed. 865 (1950): "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." In short, the State may not permanently deprive a person of a property interest without first giving that person a meaningful opportunity to oppose the deprivation and to have the decision made fairly and impartially. Bell v. Burson, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, 29 L.Ed.2d 90 (1971).

As this Court has stated in Mathews v. Eldridge, supra, "this Court consistently has held that some form of hearing is required before an individual is finally deprived of

a property interest. Wolff v. McDonnell, 418 U.S. 539, 557-558, 94 S.Ct. 2963, 2975-2976, 41 L.Ed.2d 935 (1974). See, e. g. Phillips v. Commissioner of Internal Revenue, 283 U.S. 589, 596-597, 51 S.Ct. 608, 611-612, 75 L.Ed. 1289 (1931). See also Dent v. West Virginia, 129 U.S. 114, 124-125, 9 S.Ct. 231, 234, 32 L.Ed. 623 (1889). The 'right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.' Joint Anti-Fascist Comm. v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 646, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring). The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965). See Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 (1914)."

Although some form of hearing is required before a person can be finally deprived of a protected property interest, the constitutional sufficiency of the procedures used depends on a balancing of the competing governmental and private interests involved in the taking. These competing interests include: (1) the importance of the private interest that will be affected by the official action; (2) the length or finality of the deprivation; (3) the risk of an erroneous deprivation of such interest through the procedures actually used; (4) the likelihood of governmental error; and (5) the magnitude of the governmental interests involved, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. Logan v. Zimmerman Brush Co., supra; Memphis Light, Gas & Water Div. v. Craft, supra; Matthews v. Eldridge, supra; Goss v. Lopez, supra; Wolff v. McDonnell, supra.

In the present case we are faced with a three part inquiry. First, was LDRA deprived of a protected interest?

Second, what process was LDRA entitled to? Third, did LDRA receive that process?

1. Property Interest

The property involved in this controversy is LDRA's license to operate a race track in Louisiana. The State of Louisiana, through the Commission, extensively regulates horse racing in Louisiana. The statutes governing horse racing are located in Chapter 4 of Title 4 of the Louisiana Revised Statutes. The racetracks are privately owned, but must be licensed by the Commission. the racing meets and many aspects of track management are governed by detailed state statutes and by regulations issued by the Louisiana State Racing Commission. Roberts v. Louisiana Downs, Inc., (CA 5 Cir. La 1984), 742 F.2d 221.

The licensing of persons or legal entities to conduct race meetings is governed by the provisions of La.R.S. 4:157 through 160. R.S. 4:157 provides that any person or legal entity may conduct one or more race meetings at a track each year, subject to the provision of Part I of Chapter 4 of Title 4 of the Revised Statutes, (La.R.S. 4:141-197). R.S. 4:158 provides that any person possessing the qualifications prescribed in Part I may apply to the Commission for a license to conduct race meetings. Subsection B of R.S. 4:158 allows the Commission to issue any licensee a ten year permit to operate a race track. R.S. 4:159 establishes the criteria for licensing racing associations in Louisiana and R.S. 4:160 establishes the exclusive grounds for denial or termination of a racing association's racing privileges.

On December 10, 1992, LDRA applied for and received a ten year permit or license to conduct horse racing in Louisiana. Once granted, this license could not be suspended or revoked by the Commission "at will." Suspension or revocation could only be for just cause, R.S. 4:160, and only after due proceedings held in conformity with applicable law. LSA-R.S. 4:158(A). Thus Louisiana acknowledges that a license to operate a race track is a

property interest protected by the Due Process Clause. Further, if a horse trainer's license has been found to be a protected property interest, Barry v. Barchi, supra, and a horse owner's license to race his horse has also been found to be a protected property interest, Gamble V. Webb, (C.A. 5 La. 1986), 806 F.2d 1258, it cannot be seriously argued that a license to operate a race track is not a protected property interest.

2. The Nature of the Due Process Required

The reasons that the Commission may rely on to deny or terminate racing privileges are strictly limited to the grounds set out in R. S. 4:160, which provides:

> "The commission may refuse, suspend, or withdraw licenses, permits and privileges granted by it or terminate racing privileges, for just cause. Those things constituting just cause are: (1) Any actions by a licensee or permittee contrary to the provisions of this Part and the Rules of Racing. (2) Corrupt practice. (3) Violations of the Rules of Racing. (4) Intentional falsification and/or intentional misstatement of a material fact in an application for racing privileges. (5) Material false statement to a racing official (other than a Commissioner) and/or the commission. (6) Continued failure or inability to meet its financial obligations connected with fulfillment of the purposes for which its license was issued."

The Commission's determination as to whether there is just cause to deny or terminate racing privileges must be made after "due proceedings" held in conformity with Part I of Chapter 4 of Title 4 of the Louisiana Revised Statutes. See, R.S. 4:158(A). These "due proceedings' must be held in accordance with Louisiana's Administrative Procedure Act, (R.S. 49:950-997). R.S. 4:154(A) provides in pertinent part that:

"Except as otherwise provided by this Section, the commission's hearings, practice and procedure, and rule making procedure are as provided in the Administrative Procedure Act; . . ."

Louisiana's Administrative Procedure Act, (APA), provides the procedures that must be followed whenever the grant denial or renewal of a license is required by law to be preceded by notice and opportunity for hearing. R.S. 49:951(1) defines "adjudication as the "agency process for the formulation of a decision or order. Subsection (2) of that statute defines "decision" or "order" as "[t]he whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency, in any matter other than rulemaking, required by constitution or statute to be determined on the record after notice and opportunity for an agency hearing, and including non-revenue licensing, when the grant, denial, or renewal of a license is required by constitution or statute to be preceded by notice and opportunity for hearing."

R.S. 49:961 provides in pertinent part:

"A. When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Chapter concerning adjudication shall apply.

* * *

C. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gives notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license.. ."

In an adjudication all parties are afforded the following rights under R.S. 49:955:

"A. In an adjudication, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice.

B. The notice shall include: (1) A statement of the time, place, and nature of the hearing; (2) A statement of the legal authority and jurisdiction under which the hearing is to be held; (3) A reference to the particular sections of the statutes and rules involved; (4) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

D. Unless precluded by law, informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default.

E. The record in a case of adjudication shall include: (1) All pleadings, motions, intermediate rulings; (2) Evidence received or considered or a resume thereof if not transcribed; (3) A statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose; (4) Offers of proof, objections, and rulings thereon; (5) Proposed findings and exceptions; (6) Any decision, opinion, or report by the officer presiding at the hearing.

F. The agency shall make a full transcript of all proceedings before it when the statute governing it

> requires it, and, in the absence of such requirement, shall, at the request of any party or person, have prepared and furnish him with a copy of the transcript or any part thereof upon payment of the cost thereof unless the governing statute or constitution provides that it shall be furnished without cost.
>
> G. Findings of fact shall be based exclusively on the evidence and on matters officially noticed."

Although the Administrative Procedure Act, under R.S. 49:964, provides a procedure for judicial review of agency decisions or orders that procedure is superseded by the provisions of R.S. 4:158(A) which provides that an appeal for a decision of the Commission that suspends or revokes a license or terminates racing privileges of a racing association shall be tried de novo by the court that has jurisdiction over the racing association's track.

This, in summary, is the procedure that the State of Louisiana required the Commission and the courts, on judicial review, to follow before LDRA's license could be revoked and its racing privileges terminated. Was LDRA granted these due process rights before its license was revoked and its racing privileges terminated?

3. Was Due Process Afforded?

It is not enough that a state provides an adequate due process procedure for state agencies to follow. Due process requires such agencies to substantially comply with those procedures. In reviewing state action "we look to substance, not to bare form, to determine whether constitutional minimums have been honored." Willner v. Committee on Character, 373 U.S. 96, 106--107, 83 S.Ct. 1175, 1182, 10 L.Ed.2d 224 (1963) (concurring opinion by Justice Goldberg).

LDRA was entitled to the protection of these due process procedures at the original hearing of April 29, 1994 which was the original attempt by the Commission to revoke

LDRA's license and to terminate its racing privileges. Even though the submission of the supplemental application for a license on October 31, 1998 was in conjunction with a settlement agreement the Commission was still required to follow the due process procedures set out by state law in determining whether to approve or reject the application. Lastly LDRA was entitled to a de novo hearing from the Racing Commission's action of April 29, 1994 and the Commission's failure to consider LDRA's application of October 31, 1998.

a. April 29, 1994 revocation of LDRA's License

R.S. 49:961 made it unlawful for the Commission to revoke LDRA's license and or to terminate LDRA's racing privileges on April 29, 1994 without first giving LDRA notice by mail of the facts or conduct which warranted the intended action and without giving LDRA an opportunity to show compliance with all lawful requirements for the retention of the license or racing privileges. In addition to the requirement in any adjudicatory proceeding of notice and opportunity to be heard, in proceeding which may lead to suspension, revocation, annulment or withdrawal of an existing license, agency must give licensee an opportunity prior to institution of formal proceedings, to show that actions complained of did not violate the law or agency rules. Bertucci, supra. The Commission revoked LDRA's license on April 29, 1994 without complying with this requirement.

Further, the Commission gave LDRA no notice that it intended to or was contemplating revoking LDRA's license. Although LDRA suspected that the Commission would revoke its license at the April 29th hearing, LDRA had no formal notice of that fact.

b. October 31, 1998 application

The settlement agreement between LDRA and the Commission suspended the litigation regarding the April 29, 1994 revocation of LDRA's license or racing privileges.

LDRA agreed to submit a new or supplemental application, which would include a binding and enforceable commitment for at least $10 million. That application had to be filed by October 31, 1998. The Commission agreed to investigate the financial commitment(s) and to promptly act upon LDRA's application. Only if LDRA failed to file an application with a binding enforceable financial commitment for at least $10 million could the suit be dismissed.

LDRA filed the application with the financial commitment on October 30, 1998. The Commission was then required to act on the application by either approving it or denying it. The application could only be denied for just cause, and even then only if the application failed to meet one of the six grounds set out for denial under R. S. 4:160. In order to deny the application for just cause the Commission was required by R.S. 4:158(A) to hold a hearing in accordance with the APA. The Commission failed to do this.

In fact the Commission never acted on the application. Instead the chairman of the Commission, on his own and without a vote of the Commission, directed the Commission's legal counsel to file a motion to dismiss the lawsuit on the pretexts that the financial commitment was not a binding commitment for $10 million and that the application was not made in the name of LDRA. The Commission gave LDRA no opportunity to prove that the commitment was a binding commitment for $10 million or that the application was made on behalf of LDRA. The Commission failed to give LDRA even the minimum due process requirements of "notice and opportunity for hearing appropriate to the nature of the case." Mullane v. Central Hanover Bank & Trust Co., supra.

Utilizing this court's balancing test, it is clear that LDRA has been denied due process by the Commission. LDRA's stake in the outcome of this matter is substantial. Substantial expense is involved in the building and operating of a racetrack. Without a license to conduct racing a

racetrack is useless and the investment in the enterprise is lost. The loss of revenues is also substantial. Between the loss of investment capital and loss of revenues LDRA would lose millions of dollars a year. Further this loss would be permanent.

There is a great risk of an erroneous deprivation of this investment and revenues through the procedures used by the Commission. In fact that risk has occurred. The Commission has thrown out the window every procedural safeguard required by the Due Process Clause, by Louisiana's APA and by Louisiana's statutes governing the issuance of racing licenses. The result is arbitrary and capricious actions by the Commission deciding which procedures it will follow and which procedures it won't follow. The likelihood of error is substantial.

On the other side of the equation are the interest of the State of Louisiana's and the fiscal and administrative burdens that adherence to due process requirements would impose on the Commission. While the State of Louisiana has a substantial interest in insuring the integrity of racetracks the State has already balanced its interest against the interests of racing associations like LDRA. The State has set out a procedure for the Commission to follow in approving, denying, suspending or revoking the licenses of racing associations. There is not compelling state interest requiring the Commission to evade the procedures set out by the State of Louisiana. The fiscal and administrative burdens of adhering to the state procedures are minimal. Those burdens certainly do not outweigh the degree of harm resulting from a wrongful denial or revocation of LDRA's license or racing privileges.

c. <u>Denial of due process on judicial review.</u>

After the Commission revoked LDRA's license on April 29, 1994 LDRA filed a petition for judicial review. The complete record of the Commission's meeting of April 29, 1994 was never filed with the district court. The district

court never held a trial de novo regarding the Commission's revocation of LDRA's license on April 29, 1994.

After LDRA filed its application on October 31, 1998, in accordance with the consent judgment, the Commission filed a motion to dismiss with the Civil District Court for the Parish of Orleans, the same court that had denied LDRA a suspensive appeal from the April 29, 1994 order of the Commission. The Civil District Court, without hearing any testimony, without taking any evidence, and without giving LDRA the opportunity to be heard dismissed the suit with prejudice after a five minute session in open court.

When the dismissal was appealed to the Louisiana Fourth Circuit Court of Appeal the complete record was not sent to the Court of Appeal. That court, therefore, had no facts or evidence upon which to decide the appeal. Effective judicial review is possible only if the decisions of the administrative agencies and the lower courts are based on substantial evidence and reasoned findings. Baltimore & Ohio Railway Co. V. Aberdeen & Rockfish Railway Co., 393 U.S. 87, 91-92, 89 S. Ct. 280, 284, 21 L.Ed.2d 219, reh. den. 393 U.S. 1124, 89 S. Ct. 987, 22 L.Ed.2d 131.

While the erroneous decision of state courts do not deprive an unsuccessful party of his property without due process of law the party must have been fully heard in the regular course of the judicial proceedings. Bonner v. Gormn, 213 U. S. 86, 29 S. Ct. 483, 53 L.Ed 709 (1909); Central Land Co. v Laidley, 159 U. S. 103, 16 S. Ct. 80, 40 L.Ed. 91 (1895).

In the present case LDRA has not been fully heard, either before the Commission or the courts of Louisiana. The Commission has steadfastly refused to follow any procedural due process in dealing with LDRA. Apparently the Commission believes that there are no practical limits on its discretion, or any need for it to base its decisions on substantial evidence and reasoned findings. The courts, which must rely on the administrative record and articulated

reasons for the administrative decision cannot conduct an effective judicial review where there is no substantial evidence or reasoned findings. Even if the judicial review is by way of a trial de novo the court conducting the trial de novo must take evidence and put it on the record. Without a record an appeal court has no basis for rendering a decision that comports with due process.

For these reasons this Court should grant a Writ of Certiorari.

B. DENIAL OF EQUAL PROTECTION

In its persecution of LDRA, the Commission at the April 29, 1994 hearing cites the legal basis for its action as LSA-R.S. 4:141, 147, 159 and 160. There is no question that, evidenced by the Commission's prior issuance of a license, LDRA has complied with the applicable provisions of sections 141, 147 and 159.

LSA-R.S. 4:148 reads in pertinent part:

> The commission shall make rules, regulations and conditions for the holding, conducting and operating of all race tracks, race meets and races held in this state and for the conduct of the racing industry in this state under this part. . . .

The record shows that the Commission has not promulgated any rules, regulations or standards which would guide the application of §160. Therefore, the application of this section is subject to the whims of the Commission members, who may arbitrarily and capriciously use this statute to terminate a licensee, without due process, to serve a political purpose which may be contrary to the goals and mission of the Commission as set forth in the statutes. Such conduct is violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

In State v. Chisesis, 187 La. 675, 175 So. 453 (La. 1937), Chief Justice O'Niell wrote "[6] Adverting to the other reason why the statute in question constitutes a denial of the equal protections of the laws, we find the books full of

decisions to the effect that a state statute or municipal ordinance which undertakes to regulate a lawful business or occupation by conferring upon a designated officer, or commission, or board, the authority, within his or its judgment or discretion, to grant or withhold a license or permit to engage in the business or occupation, and which does not prescribe a rule or standard to which all persons similarly situated may conform, constitutes a denial of the equal protection of the laws. The leading case on the subject, of course, is Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220. The Louisiana cases maintaining this principle are: State v. Mahner (1891), 43 La.Ann. 496, 9 So. 480; State v. Dubarry (1892), 44 La.Ann. 1117, 11 So. 718; State v. Kuntz (1895), 47 La.Ann. 106, 16 So. 651; City of New Orleans v. Palmisano (1920), 146 La. 518, 83 So. 789; City of Shreveport v. Herndon (1925), 159 La. 121, 105 So. 247; State ex rel Dickson v. Harrison (1926), 161 La. 218, 108 So. 421; and Baltman Mortuary Service Inc. v. City of New Orleans, 174 La. 360, 140 So. 503."

Furthermore, LSA-R.S. 4:147(6) states:

§147. Specific duties of commission.

(6) To make rules and regulations for the holding, conducting, and operating of all race tracks, race meets, and races held in Louisiana, provided such regulations are uniform in their application and effect.

The actions of the Commission at its April 29, 1994 meeting not only violated the equal protection clause of the U.S. Constitution but its own mandate as stated above. Ostensibly, the grounds for its actions against LDRA are couched within the meaning of §160(6), "continued failure or inability to meet its financial obligations connected with fulfillment of the purpose for which its license was issued." Since no regulations have ever been promulgated, the record of the Commission in dealing with this issue should set forth the guidelines. Although LDRA was not permitted to call witnesses and present evidence as to the previous

Commission rulings, Commissioner Stall opened the door on Louisiana Downs (the last track constructed in Louisiana prior to the issuance of LDRA's license in 1992). (See ***Appendix M, page 29m***). Originally Sawyer Downs was licensed and after four years of failing to get financing, the original applicants sold out to the DeBartolo interests and the track opened six years after the original permit for a referendum was issued. LDRA was denied the right to introduce evidence of the timelines for the construction of Jefferson Downs, Delta Downs, Evangeline Downs, Lindsey Downs and Clarence Downs. Had the Commission followed its mandate to apply its rules equally, there could have been no revocation. The Commission demanded that LDRA provide audited financial statements under rules which applied to operating race tracks, which are quite different from a startup licensee which has not commenced operations. No such scrutiny was required of Evangeline Downs, which has twice filed for bankruptcy relief, or Lindsey Downs which folded for financial reasons, or likewise Clarence Downs and, finally, Jefferson Downs, which surrendered its license based on a prediction of possibly losing money, but was never required to justify its actions.

The record further shows that at the December 2, 1994 meeting, the Commission refused to place LDRA on the agenda so that a $10 million commitment for financing could be considered. At the meeting, LDRA asked that the Commission suspend the rules and by two-thirds vote consider LDRA's application. LDRA was ruled out of order. Immediately thereafter, the Commission voted to suspend the rules to add Old Evangeline Downs, L.C. to the agenda and proceeded to issue a license to take over Evangeline Downs based on a verbal application. There was not even a formal written application as required by law and no financial information provided.

If LDRA has not convinced this Honorable Court, LDRA directs the Court to Assistant Attorney General, Melinda M. Tucker, legal advisor to the Commission, to

make its final argument regarding equal protection. In answer to Commissioner Thomas' question on page 77m of the April 29, 1994 transcript (See ***Appendix M***), Ms. Tucker stated on page 77m-78m:

> I think the problem may be with voting on that right now is that we really need to review--we need to go back and start from square one and we need to review exactly what kind of financial situation--cause we don't even know what the necessary--definition of necessary financial is at this time. We need to probably--we need to see what kind of submission Livingston Downs can make with respect to their financial responsibility to this industry.

This incredible comment came only minutes after the Commission had voted to revoke LDRA's license on the ground that it failed to meet the Commission's financial requirements.

The actions of the Commission clearly violated the mandates of LSA-R.S. 4:147(6) and present to this court a textbook case to support the Louisiana Supreme Court's ruling in Chisesi, supra, and this Honorable Court's ruling in Yick Wo, supra. LDRA's constitutional right to equal protection has been violated and this Honorable Court should correct this inequity.

CONCLUSION

It is ironic that after the revocation of LDRA's license on April 29, 1994, a majority of the Commission members expressed the need for a new racetrack and vowed to help in any way possible (See ***Appendix M, pages 77m-79m***). Yet, on two occasions subsequent to the April 29 Commission meeting, LDRA presented two separate $10 million financing commitments which the Commission refused to consider.

This Honorable Court should grant a Writ of Certiorari in this case to rectify egregious violations of due

process and denial of equal protection by a Louisiana state agency, the Louisiana State Racing Commission. Simply put, should the Louisiana State Racing Commission, for the benefit of and in collusion with the owners of an established racetrack bent on eradicating competition, be allowed to totally disregard all due process and equal protection rights granted to private parties under the U. S. Constitution and state law? Petitioner respectfully urges that it should not.

It is a denial of equal protection when a statute provides that a license can be revoked or withheld when there are no clear guidelines established to justify such revocation, thereby subjecting the licensee to arbitrary and capricious actions according to the whims of the board or commission which issued the licenses.

Respectfully submitted:

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APPENDIX A

The Supreme Court of the State of Louisiana

JEFFERSON DOWNS CORPORATION, INC., ET AL.

VS.

LOUISIANA STATE RACING COMMISSION NO. 2000-C-1067

CONSOLIDATED WITH LIVINGSTON DOWNS RACING ASSOCIATION

VS.

LOUISIANA STATE RACING COMMISSION

IN RE: Livingston Downs Racing Asso.; – Plaintiff; Applying for Writ of Certiorari and/or Review, Parish of Orleans, Civil District Court Div. G. Nos. 92-20961, 95-15331; to the Court of Appeal, Fourth Circuit, No(s). 99-CA-1001, 99-CA-1002

May 26, 2000

Denied.

JPV
PFC
HTL
CDK
BJJ
CDT
JTK

MARCUS, J., not on panel.

Supreme Court of Louisiana
Rai T. Daigle
Deputy Clerk of Court
For the Court

APPENDIX B

COURT OF APPEAL, FOURTH CIRCUIT

STATE OF LOUISIANA

Clerk's Office, New Orleans, Mar 16 2000

DEAR SIR:

REHEARING WAS THIS DAY REFUSED
IN THE CASE ENTITLED
JEFFERSON DOWNS CORP., ET ALVLOUISIANA STATE RACING COMM.
No. 99-CA-1001 c/w 99-CA-1002

Very Truly yours,

DANIELLE A. SCHOTT
CLERK OF COURT

APPENDIX C

FOURTH CIRCUIT COURT OF APPEAL

STATE OF LOUISIANA

DOCKET NO. 99/CA/1001
C/W NO. 99/CA/1002

JEFFERSON DOWNS CORP., ET AL.

versus

LOUISIANA STATE RACING COMMISSION
Suit No. 92-20961 c/w Suit No. 95-13551, Division "G"
Civil District Court for the Parish of Orleans

APPLICATION AND INCORPORATED MEMORANDUM FOR REHEARING EN BANC
(Filed Feb. 28, 2000)

MAY IT PLEASE THE COURT:

For the reasons set forth herein below, Livingston Downs Racing Association, Inc. ("LDRA") hereby applies for rehearing *en banc* with this Honorable Court from the decision rendered February 16, 2000 in the above entitled and numbered cause which affirmed the trial court's judgment dismissing LDRA's suspensive appeal of the Louisiana State Racing Commission's ("Commission") April 29, 1994 revocation of LDRA's licenses. This Court's decision is based on incomplete facts and when all pertinent facts are considered, is factually and legally incorrect. LDRA respectfully urges that a careful examination on rehearing is warranted.

On careful review of this Honorable Court's February 16, 2000 opinion in this matter, it is clear that the material facts in support of this Court's legal conclusions are incorrect. Moreover, the record was so far from complete

that it placed this Court at a distinct disadvantage in ascertaining all material facts relating to this matter. The state of the record is more fully addressed in Section VI, herein below.

I. The settlement agreement between the parties was not properly before this Honorable Court.

Page 2 of this Honorable Court's decision states "to avoid further litigation, the parties entered into a consent judgment and settlement agreement on November 15, 1996." The settlement agreement and the consent judgment dealt with totally separate and distinct issues. The settlement agreement encompassed the entirety of the agreements made between the parties regarding multiple litigation. The consent judgment executed between the parties on November 15, 1996 was but one issue of six different issues between the parties that are outlined in the settlement agreement executed on November 15, 1996. The only issue in the settlement agreement regarding the instant litigation is "the parties agree to obtain a consent decree in the matter entitled "Livingston Downs Racing Association, Inc. v. Louisiana State Racing Commission," No. 92-20961 c/w 95-15331, Civil District Court for the Parish of Orleans in the form annexed as *Appendix A*." The intent of the parties regarding the instant litigation is set forth in the consent judgment which is (or should be) a part of the record of this matter. The settlement agreement is not part of the record of this matter and is not indicative of the intent of the parties with respect to this litigation. Moreover, as the settlement agreement was not part of the record at the trial court, it

should not have been a factor in this Court's decision because it was not properly before this Court.

II. This Honorable Court did not take cognizance of pertinent provisions of the consent judgment, which control this appeal; the issue of whether the Commission properly revoked LDRA's license was not rendered moot by the consent judgment.

This Honorable Court states on page 2, "the specific paragraphs of the consent judgment pertinent to this appeal read as follows: . . . " Paragraphs 6, 7, 8, 9, 15, 16, and 18 are enumerated therein. However, the Court did not take cognizance of the significance of paragraphs 1, 2 and 4 which state:

> 1. IT IS ORDERED, ADJUDGED AND DECREED that the trial of this matter scheduled for February 3, 1997 be and it is hereby CONTINUED WITHOUT DATE.
>
> 2. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that these proceedings, including all discovery herein, be and they are hereby STAYED.
>
> 4. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commission shall consider an application to be filed by Livingston Downs Racing Association, Inc. for a ten (10) year license to operate a racetrack on the property situated in Livingston Parish, which property is more fully described in the applications previously filed by Livingston Downs Racing Association, Inc. with the Commission, and for racing dates for a period not exceeding three racing

years, all pursuant to La. R.S. 4:158(B), on or before October 31, 1998.

The issue of whether the Commission properly revoked LDRA's license without cause was not rendered moot when the parties entered into the consent judgment. In fact, the consent judgment expressly states the opposite. Paragraphs 1 and 2 of the consent judgment clearly contemplate the continuation of this litigation. Furthermore, the aforementioned paragraphs in the consent judgment clearly mandate action by the Commission upon timely receipt of LDRA's application. LDRA timely filed its application on October 30, 1998.

III. LDRA timely filed an application and commitment letter in accordance with Sections 4 and 6 of the consent judgment.

On Friday, October 30, 1998 at 9:35 a.m., LDRA hand delivered the following documents to the Commission offices in New Orleans, Louisiana: 1) an application by Livingston Downs Racing Association, L.L.C. for a license; 2) a financial statement of Livingston Downs Racing Association, L.L.C.; 3) the balance sheet of Livingston Downs Racing Association, Inc.; and 4) a "Conditional Commitment for Collateralized Mortgage Financing" issued by Remington Financial Group, Inc. to applicant Al Ransome, Livingston Downs Racing Association, Inc. Copies of these documents were attached as Exhibit I, *in globo*, to LDRA's opposition to the Commission's motion to dismiss, and therefore, are or should be a part of the record on appeal. Contrary to this Court's

findings of fact (page 4 of the Court's opinion), the commission did not receive these documents via fax, but by hand delivery. Paul Burgess, Executive Director of the Commission at that time, attested to the receipt of these documents by affixing his signature, date and time of receipt to the face of said documents. A date stamped copy of LDRA's opposition filed with the trial court is attached as Exhibit 1. While this Court may not allow introduction of evidence into the record of these proceedings, it is clear proof that the record of this matter is not complete. This Court incorrectly states on page 7 of its opinion that it was November 12, 1998 when the Racing Commission finally received an original application and a copy of the conditional commitment with the signature page.

IV. Action by the Commission was expressly provided for in the consent judgment.

This Court further states on page 6 "once the consent judgment was confected, the Racing Commission could take no further action regarding Livingston Downs' license that was not expressly provided for in the consent judgment." However, the reverse is true. Once the application and commitment letter were filed by LDRA with the Commission, then the Commission was mandated by the consent judgment to perform the action provided for in the consent judgment, namely conduct an investigation of LDRA's funding sources and act upon the application. Paragraphs 4 and 15 expressly provide for action by the Commission. The manner in which the Commission is authorized to take action is dictated by LSA-R.S. 4:151, et

seq. and LSA-R.S. 49:961, et seq. This Honorable Court has ruled on page 5 of its opinion that the Administrative Procedure Act applies to actions by the Commission.

The Consent Judgment provided that LDRA would file an application on or before October 31, 1998, The application had to include an enforceable commitment letter in the amount of ten million dollars. The Commission then had the duty to investigate the source of LDRA's funding. Upon completion of its investigation the Commission was required to promptly act upon the application. Or, as Paragraph 4 of the Consent Judgment states, "the Commission SHALL consider an application" [to be filed by LDRA]. (emphasis supplied).

This Honorable Court's primary focus is whether LDRA complied with the terms of the consent judgment in the filing of its application. Among other things, this court is basing its decision on semantics (i.e., the fact that the commitment has the word "conditional" in its title and the fact that the commitment does not use the magic word "in an amount not less than ten million ($10,000,000.00) Dollars"). This does not alter the fact that LDRA complied with the consent judgment and filed an application on or before October 31, 1998 together with a commitment letter in the amount of $10,000,000.00.

In *Birchard v. State Bd. of Medical Examiners,* 609 So.2d 980 (La. App. 4th Cir. 1992), Birchard appealed from the board's refusal to grant him permission to practice medicine at a certain hospital, without first giving him a hearing. The board had previously revoked Birchard's license but authorized him to "practice medicine only as an employee of a medical institution approved in

advance by the board." This Court found that Birchard had not appealed the decision revoking his license or placing this condition on him. The court found that Birchrd [sic] was appealing only from the procedure the board used to enforce its decision not to allow him to practice at a certain hospital. The court went on to state "there was nothing in the wording of 'prior approval' condition of probation to even remotely suggest to Dr. Birchard that he would be entitled to a hearing each time the Board exercised its approval process. He had no reason to expect anything other than the unilateral action of the Board in the enforcement of that condition of probation . . . "

In the present case once an application containing a ten million dollar commitment was filed with the Commission, it had no unilateral right to do anything other than conduct an investigation and convene a hearing.

In *Ensenat v. Bd. of Medical Examiners,* 593 So.2d 929 (La. App. 4 Cir. 1992) Dr. Ensenat was brought before the board on various charges. At the hearing he entered into a consent order revoking his license to practice medicine and waiving his right to seek reinstatement for a period of five years. After five years he could seek reinstatement but reinstatement would depend solely upon the discretion of the board. When Dr. Ensenat sought unconditional reinstatement the board offered only conditional reinstatement Ensenat then filed suit to compel the board to reinstate his license to practice medicine or to afford him a full hearing on his application for reinstatement.

The court found that the consent agreement did not give Ensenat the legal right to reinstatment [sic]. In

regard to Ensenat's argument that due process required the board to grant him a hearing the court stated at page 933 that:

> Dr. Ensenat's possession of a medical license gives him a vested property interest, which guarantees him a right to due process prior to revocation of that license. However, by virtue of the 1976 consent order, that property interest was properly extinguished by due process of law, and Dr. Ensenat does not claim otherwise.

In the present case LDRA's possession of a license, even if suspended, gives it a vested property interest, which guarantees it a right to due process prior to being deprived of that license. The consent judgment expressly contemplates and expressly provides that a hearing be held by the Commission upon LDRA filing an application with a ten million dollar enforceable commitment by October 31, 1998. LDRA filed its application together with a signed ten million dollar enforceable commitment on October 30, 1998. Under the consent judgment, LSA-R.S. 4:158 and the Administrative Procedure Act, the ball was then in the Commission's court for it to conduct an investigation and hold a hearing. It did niether [sic].

R. S. 4:158 provides that "the Commission shall convene to consider the refusal or granting of the permits or licenses applied for." The procedure used by the Commission must afford an applicant a fair and proper opportunity to present the merits of the request and to have a determination made after the request is considered. A procedure devoid of staff reports and studies or sworn testimony, and no opportunity for interested parties to confront and cross examine violates due process and "is

not at all consistent with the letter or the spirit of the administrative procedure act." *Jefferson Downs v. La. State Racing Com'n*, 288 So.2d 653, (La. App. 4 Cir. 1974).

In the present case the Commission never convened a hearing to consider the application, much less conducted a proper hearing.

This Court stated on page 5 of its opinion that "once the consent judgment and settlement were approved and entered into in accordance with the Open Meetings Law and Administrative Procedure Act, the parties were bound by the provisions of the consent judgment, over which the trial court expressly retained jurisdiction." Yet, the Court further stated that "nowhere in the consent judgment does it provide the Racing Commission had to convene in an open meeting to authorize the filing of the motion to dismiss Livingston Downs' suit for failure to comply with the terms of the consent judgment." On one hand this Honorable Court states, on page 6, that "pursuant to paragraph 15, the Racing Commission could seek a dismissal of the suit if it determined the application and commitment letter were insufficient or untimely." This contemplates action by the ***full commission.***

It is well settled that a representative of a legal entity cannot act without special authorization. For example, the president of a corporation may not sue in the name of the corporation without special authorization from the board of directors to bring the suit. See *Pardee Co. v. H. Alfrey Heading Co.*, 129 La. 749, 56 So.2d 660 (La. 1912). In the present case there is no evidence in the record that the Commission gave special authorization to its legal counsel, either in the consent judgment or in an open meeting,

to proceed to act on the application. Absent such special authorization, the Commission's legal counsel had no authority to act on her own. Moreover, pursuant to Paragraph 18 of the Consent Judgment, the trial court retained jurisdiction ***only*** over the enforcement of the consent judgment. Paragraphs 4, 5, 7, 8, 9, 10, 11, 12, 16, and 17 ***clearly*** contemplate and mandate action by the Commission with respect to LDRA's application filed on October 30, 1998.

V. The trial court did not conduct a contradictory hearing, as contemplated by the Louisiana Code of Civil Procedure; LDRA was denied its constitutional right to due process under the state and federal constitutions as well as its constitutional right to be secure in its property without due process of law.

Although the motion to dismiss filed by the Commission was scheduled for contradictory hearing on December 4, 1998, a contradictory hearing did not take place. LDRA refers this Court to its original brief, page 6. Moreover, the trial court did not transcribe any portion of this so-called contradictory hearing. There was no contradictory hearing as found by this Court on page 5 of its opinion. The trial court's actions on December 4, 1998 are set forth in LDRA's original brief filed with this Court. The refusal of a trial court to permit a party to participate in a proceeding in open court and to present that party's case constitutes denial of due process under both the U.S. and La. Constitutions. It also constitutes denial of that party's right to free access to the courts under La. Const. Art. 1, Section 22. *Zarek vs. Sanders*, 656 So.2d 1038 (La. App. 5 Cir. 1994). Substantive due process is involved in

claims in which action by a state or local government interferes with property interest in an arbitrary or capricious manner. *Standards Materials, Inc. v. City of Slidell,* 96-0684 (La. App. 1 Cir. 9/23/97, 700 So.2d 975.

La. Const. Art. 1, Section 19 provides provides [sic] that "no person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based . . . " This provision is not limited to criminal convictions or forfeitures. See, *Walker v. Stewards of Jefferson Downs Race Track,* 615 So.2d 403, (La. App. 4 Cir. 1993), and *Something Irish Co. V. Rack,* 333 So.2d 773, (La. App. 1 Cir. 1976).

LDRA attempted to introduce evidence to preserve the record to the trial court at the hearing of this matter and was not allowed to do so. Although an incomplete record will not necessarily be a violation of Art. 1, Sect. 19, the jurisprudence is clear that where a party's right of review is prejudiced, not by his own act or omission, but by the failure of a court to protect that right, then that party's rights under Art. 1 Section 19 are violated. *State v. Clark,* 93-0321 (La. App. 4 Cir. 10/27/94), 644 So.2d 1130, writ denied 94-2884 (La. 3/24/95), 651 So.2d 287.

La. Const. Art 1, Section 22 provides that "all courts shall be open and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights." This provision is a mandate to the judiciary. *Crier*

v. Whitecloud, 496 So.2d 305 (La. 1986). See also *Zarek v. Sanders*, supra.

This Honorable Court states that if LDRA was aggrieved by the Commission's ruling or failure to act pursuant to Paragraph 16, it could seek judicial review by a summary proceeding or in a trial de novo or otherwise apply to the Court for appropriate relief. This Court's own ruling contains conflicting opinions. In this section, the Court refers to the "Racing Commission's ruling." In order for the Commission to rule, it had to conduct a meeting pursuant to the Open Meetings Law, which this Court said was not necessary.

LDRA could not seek judicial review by summary proceeding since the commission failed to make an adjudication. The Commission never acted upon LDRA's application. LDRA filed a motion to enforce Paragraph 16 of the consent judgment. That motion, as well as all of the exceptions and a writ of mandamus filed by LDRA (see Section VI herein below), were never heard or considered in the trial court. A terse statement to the effect that "the motion of the Commission is granted and this suit is dismissed" without hearing evidence or oral argument from the parties is a clear violation, under the circumstances of the case, of La. Const. Art. 1, Section 22.

VI. The record on appeal was incomplete; therefore, this Court could not rule on the merits of either the original appeal of the April 29, 1994 license revocation or the appeal from the trial court's dismissal.

LDRA filed three separate motions to order the Clerk of Court for the Parish of Orleans to complete the record

on appeal, all of which are a part of the appellate record. This Honorable Court has twice ordered the appellate record supplemented. However, on November 5, 1999, the last return date given to the Civil District Clerk to correctly and completely supplement the record, the record still did not contain even the pleadings related to the trial court's dismissal of this action. The same day, undersigned counsel filed its third motion to order the Civil District Clerk to complete the appellate record and a motion to withhold submission of the case until the record was complete. Undersigned counsel never received any notification that the motions were acted upon.

Among the pleadings missing from the record herein are the following which are germane to the motion to dismiss filed by the Commission which is the subject of the instant appeal:

a. Consent Judgment between the parties filed on November 15, 1996.

b. The Commission's motion to dismiss filed on November 10, 1998.

c. LDRA's motion to continue hearing on the commission's motion to dismiss filed November 18, 1998.

d. The Commission's opposition to LDRA's motion to continue hearing filed November 23, 1998.

e. The trial court's November 30, 1998 order denying LDRA's motion to continue.

f. LDRA's opposition to the Commission's motion to dismiss filed on December 1, 1998.

g. LDRA's motion to enforce Paragraph 16 of Consent Judgment, set aside Consent Judgment, reinstate proceedings and discovery and to set trial date filed on December 3, 1998.

h. LDRA's memorandum in support of motion to enforce Paragraph 16 of Consent Judgment, set aside Consent Judgment, reinstate proceedings and discovery and to set trial date filed on December 3, 1998.

i. LDRA's dilatory exception of prematurity and peremptory exception of no cause of action filed on December 3, 1998.

j. LDRA's memorandum in support of dilatory exception of prematurity and peremptory exception of no cause of action filed on December 3, 1998.

k. LDRA's petition for writ of mandamus filed on December 3, 1998.

l. The Commission's motion and incorporated memorandum to quash request for production of documents filed on December 4, 1998.

m. LDRA's petition for suspensive appeal filed on December 21, 1998.

n. LDRA's notice of intent to apply for writs filed on December 21, 1998.

o. Trial Court's December 21, 1998 order granting LDRA's suspensive appeal filed on December 21, 1998.

p. LDRA's motion to limit the record on appeal filed on January 20, 1999.

q. Court's notice of estimated appeal cost filed February 8, 1999.

The Civil District Clerk failed to even supplement the record with these seventeen documents which are required for this Court to render its decision.

Moreover, the record of the April 29, 1994 Commission meeting which is the subject of this lawsuit, which the commission supplemented with this Court, is still far from complete. The record does not contain all of the pleadings filed by LDRA with the Commission, nor does it contain LDRA's attempts to have witnesses subpoenaed or documentation of the Commission's blatant refusal to do so.

LDRA offered, in both its second and third motion to complete the record, to provide legible copies of all pleadings to either the trial court or to the appellate if necessary.

LDRA has made every attempt to have a complete record before this Court. Without a complete record, its constitutional rights under Article 1, Section 19 of the Louisiana Constitution are being violated. Although an incomplete record will not necessarily be a violation of Art. 1, Sect. 19, the jurisprudence is clear that where a party's right of review is prejudiced, not by his own act or omission, but by the failure of a court to protect that right, then that party's rights under Art. 1 Section 19 are violated. *State v. Clark*, supra.

VIII. Ownership in LDRA was properly disclosed at the time the application was submitted.

LDRA complied with the provisions of LSA-R.S. 4:147(4) by properly stating the ownership at the time the

application was filed. The commitment provided that at a *later* date LDRA may transfer an ownership interest to parties selected by Remington, at its sole discretion. This clause legally bound only LDRA and Remington. Parties cannot, by contract, supersede state law. Both Remington and LDRA were aware that they must submit any ownership changes to the Commission for its approval. The Commission still had the power and authority to reject, for just cause, any party submitted by Remington. The Commission had the power to deny Remington's participation until such time as it submitted nominees acceptable to the Commission.

The Court, on page 4 of its opinion, addresses the Commission's objections to the application filed in the name of LDRA, LLC. The application was filed by Livingston Downs Racing Association in the name of its **wholly owned subsidiary** to satisfy a condition of the financing agreement. There had been no change in any of the parties to the original LDRA application. It was well within the Commission's discretion to approve the modified application, as it has done prior to and subsequent to LDRA's submission of its application. Had LDRA been allowed to introduce evidence at the December 4, 1998, the Commission transcripts in which the Commission allowed Louisiana Downs and Evangeline Downs to deviate from its application, would be in the record. LDRA was not allowed to do so. Moreover, had the Commission conducted a hearing as it was mandated to do under R.S. 4:158(B) and the consent judgment, this evidence could and would have been introduced before the Commission. LDRA was not allowed to do either, in violation of its state and federal constitutional rights.

VII. Conclusion

This Court's ruling contains conflicting opinions regarding the ***Commission's*** jurisdiction to grant or deny the license application filed by LDRA. Moreover, the ruling contains conflicting legal conclusions based on erroneous or incomplete facts. For the foregoing reasons, LDRA respectfully requests a rehearing *en banc* with this Honorable Court from the decision rendered February 16, 2000 in the above entitled and numbered cause which affirmed the trial court's judgment dismissing LDRA's suspensive appeal of the Commission's April 29, 1994 revocation of LDRA's licenses.

SUBMITTED BY:

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Certificate of Service

I hereby certify that a copy of the foregoing application has been sent to all counsel of record this 28th day of February, 2000.

/s/ J. Marvin Montgomery
J. Martin Montgomery

AND

/s/ J. Marvin Montgomery
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APPENDIX D

JEFFERSON DOWNS CORPORATION, INC., ET AL.	*	**NO. 99-CA-1001 C/W NO. 99-CA-1002**
VERSUS	*	**COURT OF APPEAL**
LOUISIANA STATE RACING COMMISSION	*	**FOURTH CIRCUIT**
CONSOLIDATED WITH **LIVINGSTON DOWNS RACING ASSOCIATION**	*	**STATE OF LOUISIANA**
VERSUS	*	
LOUISIANA STATE RACING COMMISSION	*	

APPEAL FROM
CIVIL DISTRICT COURT, PARISH OF ORLEANS
NOS. 92-20961 C/W 95-15331, DIVISION "G-11"
HONORABLE ROBIN M. GIARRUSSO, JUDGE

Feb. 16, 2000

* * *

MOON LANDRIEU
JUDGE

* * *

(Court composed of Judge Charles R. Jones, Judge Moon Landrieu, Judge Dennis R. Bagneris, Sr.)

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AFFIRMED

Livingston Downs Racing Association, Inc. ("Livingston Downs") appeals from a trial court judgment dismissing its suit against the Louisiana State Racing Commission ("Racing Commission"). The trial judge dismissed the suit, finding Livingston Downs failed to comply with the terms of a consent judgment that the parties had entered into on November 15, 1996. We affirm the judgment of the trial court.

At its meeting held on April 29, 1994, the Racing Commission revoked Livingston Downs' ten-year license to conduct race meets. Livingston Downs filed a petition for judicial review of the Racing Commission's action in the Twenty-First Judicial District Court for the Parish of Livingston. By judgment of the Louisiana Supreme Court the matter was transferred to Civil District Court for the Parish of Orleans pursuant to La. R.S. 4:145.1. The case was then consolidated with a related matter, *Jefferson Downs, Inc. et al. v. Louisiana State Racing Commission,* No. 92-20961, Division G, Orleans Parish Civil District Court. After the trial court dismissed the suit as untimely, Livingston Downs petitioned Civil District Court for a suspensive appeal. The trial court denied the suspensive appeal but granted a devolutive appeal. Livingston Downs subsequently filed a writ application to this Court. We granted the writ application and remanded the matter for the granting of a suspensive appeal in *Livingston Downs Racing Association, Inc. v. Louisiana State Racing Commission,* 96-1215 (La. App. 4 Cir. 6/5/96), 675 So. 2d 1214, *writ denied,* 9601750 (La. 9/3/96), 678 So. 2d 558.

To avoid further litigation, the parties entered into a consent judgment and settlement agreement on November 15, 1996. The consent judgment suspended Livingston Downs' license for two years and further provided that within two years Livingston Downs had to submit a new application which included a binding, enforceable commitment letter(s) in an amount not less than ten million dollars ($10,000,000) for the construction of a racing facility, oval and backside or the case would be dismissed.

The specific paragraphs of the consent judgment pertinent to this appeal read as follows:

> 6. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any application for permits or licenses to be issued to Livingston Downs Racing Association, Inc., which applications are filed on its own behalf and shall conform to the provisions of La. R.S. 4:158 and 4:147(4)(a) through (g) and 147(5), shall include within the application binding, enforceable commitment letter(s), in an amount not less than TEN MILLION ($10,000,000.00) DOLLARS, which provides for the funding of the construction of the racing facility, including a grandstand, a racing oval and a backside, on the timetable as set forth hereinafter.
>
> 7. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that commitment letter(s) shall issue from a source or sources suitable to and acceptable to the Commission, after prompt investigation, which may include utilization of the Racing Investigations Unit of the Louisiana State Police as well as its own staff and consultants, and in which investigation Livingston Downs Racing Association, Inc., its owners and management shall fully cooperate.
>
> 8. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Louisiana State Racing Commission, upon completion of its investigation, shall promptly act upon the application and shall not unreasonably withhold its approval or acceptance of the funding source(s).
>
> 9. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon its approval of the funding source(s), as well as the moral and

financial qualifications of any partners, shareholders, officers and officials of Livingston Downs Racing Association, Inc., other than Al J. Ransome, then the Louisiana State Racing Commission shall issue to Livingston Downs Racing Association, Inc. a ten year license to operate a racetrack as provided by law and shall approve an application for live race meetings for a period not exceeding three racing years, and shall lift the suspension of the ten year license which issued on May 27, 1993.

15. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event Livingston Downs Racing Association, Inc. fails to file an application with binding, enforceable commitment letter(s), in an amount not less than TEN MILLION ($10,000,000.00) DOLLARS, which provides for the funding of the construction of the racing facility, including a grandstand, a racing oval and backside, on the timetable as set forth hereinabove, then these proceedings shall be dismissed with prejudice at plaintiff's cost.

16. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event an application is timely filed, but the Commission withholds its approval or acceptance of the funding source(s) or otherwise refuses to issue the ten year license, or otherwise refuses to act upon the application in a prompt manner, then Livingston Downs Racing Association, Inc. may after October 31, 1998, obtain judicial review of such action by summary proceedings or in a trial de novo or otherwise apply to this Court for appropriate relief.

18. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any party may apply to

> this Court for a status hearing and this Court shall retain jurisdiction for the enforcement of this Consent Judgment.

By terms of the settlement agreement, Livingston Downs and the Racing Commission settled other litigation affecting both parties and individual past members of the Racing Commission. Both the consent judgment and settlement agreement were approved at an open meeting pursuant to Louisiana's Open Meeting Law, La. R.S. 42:4.1 *et seq.*, which was conducted in accordance with the Administrative Procedure Act, La. R.S. 49:950.*et seq.*

As the deadline approached, Livingston Downs sent a letter to the Racing Commission requesting a one-year extension. The Commission considered the request at an executive session convened in an open meeting on September 26, 1998, and, shortly thereafter, responded to the request by letter stating that it was committed to abide by the terms of the consent judgment as entered into by the parties.

On October 30, 1998, the Commission received via fax the following documents: 1) an application by Livingston Downs Racing Association, L.L.C. for a license; 2) a financial statement of Livingston Downs Racing Association, L.L.C; 3) the balance sheet of Livingston Downs Racing Association, Inc.; and 4) a "Conditional Commitment for Collaterlized Mortgage Financing" by Remington Financial Group, Inc. to applicant Al Ransome, Livingston Downs Racing Association, Inc.

On November 10, 1998, the Racing Commission filed a motion to dismiss Livingston Downs' suit, arguing that

Livingston Downs failed to satisfy the terms and conditions of the consent judgment. Specifically, it argued that the Conditional Commitment for Collaterlized Mortgage Financing was not a binding, enforceable commitment in an amount not less than ten million dollars. It also argued that contrary to La. R.S. 4:147(4) the conditional commitment allowed for ownership in Livingston Downs Association, L.L.C. by unknown persons at the sole discretion of Remington Financial Group. The Racing Commission also objected to the application because it was in the name of Livingston Downs Racing Association, L.L.C. rather than Livingston Downs Racing Association, Inc., the named plaintiff in the suit and consent judgment.

After a contradictory hearing the trial judge dismissed Livingston Downs' suit with prejudice at its cost pursuant to the November 15, 1996 consent judgment.

On appeal, Livingston Downs argues the trial court erred in dismissing its suit for two reasons. First, it contends the Racing Commission failed to take official action to authorize the filing of the motion to dismiss in violation of the Open Meeting Law. Second, it contends the Commission failed to follow procedures set forth under the Administrative Procedure Act relevant to the revocation of a license and the conduct of adjudicatory proceedings. The Racing Commission, on the other hand, argues the only issue on appeal is whether the trial court was correct in finding Livingston Downs had not complied with the consent judgment.

Livingston Downs is correct that the Administrative Procedure Act and Open Meeting Law apply to actions taken by the Racing Commission. The record indicates

that the Racing Commission complied with these statutes when it initially revoked Livingston Downs' ten-year license at an open meeting on April 29, 1994 in Bossier City and when it later approved the consent judgment and concurrent settlement agreement on November 15, 1996. Once the consent judgment and settlement were approved and entered into in accordance with the Open Meeting Law and Administrative Procedure Act, the parties were bound by the provisions of the consent judgment, over which the trial court expressly retained jurisdiction. Nowhere in the consent judgment does it provide the Racing Commission had to convene in an open meeting to authorize the filing of the motion to dismiss Livingston Downs' suit for failure to comply with the terms of the consent judgment.

Livingston Downs' argument that the granting of the Racing Commission's motion to dismiss was an improper adjudication of its license is without merit. The Racing Commission initially adjudicated Livingston Downs' license on April 29, 1994 when it revoked the ten-year license for failure to fulfill the purpose for which the license was granted. The issue of whether the Racing Commission revoked the license without cause, as Livingston Downs' argued in its suit, was rendered moot when the parties entered into the consent judgment and the Racing Commission agreed to suspend the license for two years to allow Livingston Downs to rehabilitate itself. Once the consent judgment was confected, the Racing Commission could take no further action regarding Livingston Downs' license that was not expressly provided for in the consent judgment.

By its terms, the consent judgment anticipated three possible conclusions to the litigation: 1) Livingston Downs timely filed the application including the binding, enforceable commitment letter and the Racing Commission approved the application; 2) Livingston Downs failed to file a timely application including a binding, enforceable commitment letter; and, 3) Livingston Downs timely filed an application with the binding, enforceable commitment letter but the Racing Commission failed to approve or act upon it. In any of these events, the consent judgment clearly provided for a remedy in the district court. Pursuant to paragraph 15, the Racing Commission could seek a dismissal of the suit if it determined the application and commitment letter were insufficient or untimely. If Livingston Downs' was aggrieved by the Racing Commission's ruling or failure to act, pursuant to paragraph 16 it could seek judicial review by a summary proceeding or in a trial de novo or otherwise apply to the court for appropriate relief.

The issue before the district court at the hearing on the motion to dismiss was whether Livingston Downs timely filed an application and commitment letter in accordance with the terms of the consent judgment. Whether the trial court considered the issue on the motion to dismiss by the Racing Commission or on a petition by Livingston Downs, it is clear from the record the court considered the issue in a contradictory hearing. In view of this, Livingston Downs cannot argue its license was adjudicated without notice and the opportunity to be heard.

We now address whether the trial judge erred in finding Livingston Downs failed to comply with the terms of the consent judgment.

Under the terms of the consent judgment Livingston Downs had to timely file an application including a "binding, enforceable commitment letter(s), in an amount not less than TEN MILLION ($10,000,000.00) DOLLARS, which provides for the funding of the construction of the racing facility, including a grandstand, a racing oval and backside, on the timetable as set forth hereinafter." Nonetheless, the faxed application included a document titled "Conditional Commitment for Collaterlized Mortgage Financing" by Remington Financial Group, Inc. This document expressly provided that the loan commitment was not valid unless a copy of the commitment was dated, signed by the borrower and lender and returned on or before November 10, 1998. The application and documents received by the Racing Commission never included a signature page for the conditional commitment. In fact, it was November 12, 1998 when the Racing Commission finally received an original application and a copy of the conditional commitment with the signature page.

We note that the conditional commitment submitted by Livingston Downs provided for financing in the "maximum amount of $10,000,000" rather than in "an amount not less than" ten million dollars as required by the consent judgment. Also, the conditional commitment provided for ownership in the "project" by unknown persons at the sole and absolute discretion of Remington Financial Group, Inc." This provision conflicts with La. R.S. 4:147(4), which requires a corporate applicant seeking a license to operate race meets to fully disclose the

names of the stockholders and directors of the corporation.

After reviewing the record in this case, we cannot say the trial judge's finding that Livingston Downs' application including the Conditional Commitment for Collaterlized Mortgage Financing did not satisfy the terms of the November 15, 1996 consent judgment was clearly wrong.

Accordingly, the judgment of the trial court rendered on December 4, 1998, granting the Racing Commission's motion to dismiss Livingston Downs' suit against it is affirmed. Our decision herein does not preclude Livingston Downs from reapplying for a license to operate race meets in the future.

AFFIRMED

APPENDIX E

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

DOCKET NO. 99/CA/1001
C/W NO. 99/CA/1002

JEFFERSON DOWNS CORP., INC.

versus

LOUISIANA STATE RACING COMMISSION
Suit No. 92-20961, c/w No. 95-15331, Division "G"
Civil District Court for the Parish of Orleans

ORDER

Considering the foregoing motion;

IT IS ORDERED that the Clerk of the Civil District Court for the Parish of Orleans is hereby directed to complete the record of the appeal of this matter by compiling and forwarding to this Court those documents which include Suit No. 95-15331, Division "G," and/or Suit No. 71,137, 21st Judicial District Court, Livingston Parish, in their caption, *which documents commence* ***April 29, 1994*** *through the present, excluding* those documents whose caption includes Suit No. 97-12435, Division "K" transferred to Division "G."

Said record shall be returnable to the Fourth Circuit Court of Appeal on or before the 20th day of September, 1999.

New Orleans, Louisiana this 20th day of August, 1999.

/s/ Robert J. Klees
Judge,
Fourth Circuit Court of Appeal

APPENDIX F

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

DOCKET NO. 99/CA/1001
C/W NO. 99/CA/1002

JEFFERSON DOWNS CORP., INC.

versus

LOUISIANA STATE RACING COMMISSION
Suit No. 92-20961, c/w No. 95-15331, Division "G"
Civil District Court for the Parish of Orleans

ORDER

Considering the foregoing motion;

IT IS ORDERED that the Clerk of the Civil District Court for the Parish of Orleans is hereby directed to compile and forward complete the record of the appeal of this matter by compiling and forwarding to this Court the documents listed below:

a. Motion for extension of time filed by the LSRC on May 19, 1994.

b. The LSRC's memorandum in support of item 10(b) hereinabove filed June 20, 1994.

c. Joseph Martin's motion to withdraw as counsel of record for LDRA filed on August 22, 1994.

d. Darlene Ransome's motion to enroll as counsel of record for LDRA filed on August 22, 1994.

e. Darlene Ransome's request for notices filed on August 22, 1994.

f. Memorandum in opposition to the LSRC's declinatory exception of improper venue filed by LDRA on September 12, 1994.

g. Supplemental memorandum in opposition to the LSRC's declinatory exception of improper venue filed by LDRA on September 16, 1994.

h. Transcript of hearing on the LSRC's declinatory exception of improper venue.

i. Certified copy of the trial court's September 27, 1994 judgment denying the LSRC'S declinatory exception of improper venue.

j. Notice of intent to apply for writs filed by the LSRC on September 29, 1994.

k. LSRC's application for writs to the First Circuit Court of Appeal filed on October 28, 1994.

j. [sic] Motion for extension of time to file opposition to writ application filed by LDRA on November 10, 1994.

l. Notice from the First Circuit Court of Appeal acknowledging receipt of writ application dated November 14, 1994.

m. Opposition to the LSRC's writ application filed by LDRA on November 18, 1994.

n. LDRA's motion to dismiss the LSRC's writ application filed on November 18, 1994.

o. Written reasons for judgment issued by the 21st Judicial District Court on November 28, 1994.

p. December 1, 1994 decision of the First Circuit Court of Appeal denying LDRA's motion to dismiss the LSRC's writ application.

q. Docket Schedule for hearing LDRA's writ application issued January 13, 1995.

r. LSRC's application for writs to the Louisiana Supreme Court filed on March 24, 1995.

s. LDRA's opposition to the LSRC's writ application to the Supreme Court filed on April 7, 1995.

t. Motion to supplement the record filed by LDRA on April 13, 1995.

u. LDRA's supplemental opposition to the LSRC's writ application to the Supreme Court filed on April 21, 1995.

v. LDRA's petition for rehearing by the Supreme Court filed on May 15, 1995.

w. LSRC's opposition to LDRA's petition for rehearing by the Supreme Court filed on June 2, 1995.

x. LDRA's motion to supplement its petition for rehearing by the Supreme Court filed on June 6, 1995 and the court's notice granting same on June 12, 1995.

y. LDRA's supplemental petition for rehearing filed on June 6, 1995.

z. Supreme Court's June 16, 1995 decision denying reconsideration of LDRA's petition for rehearing.

aa. LDRA's motion to enroll Breazeale, Sachse & Wilson, L.L.P. as additional counsel of record filed April 22, 1996.

bb. The trial court's May 14, 1996 judgment on the LSRC's motion to dismiss.

cc. The trial court's reasons for its May 14, 1996 judgment on the LSRC's motion to dismiss.

dd. LDRA's notice of intent to spply [sic] for writs filed on May 17, 1996.

ee. LDRA's motion fixing time for filing application for writs to the Fourth Circuit filed on May 17, 1996.

ff. LDRA's application and the LSRC's opposition to LDRA's application for writs filed with the Fourth Circuit regarding the trial court's dismissal of the case.

gg. The LSRC's motion and order to substitute counsel filed on August 14, 1996 and the Supreme Court's August 29, 1996 order granting same.

hh. The LSRC's application and LDRA's opposition to the LSRC's application for writs to the Supreme Court regarding the Fourth Circuit's reversal and remand to the trial court.

ii. September 3, 1996 decision of the Supreme Court denying the LSRC's application for writs.

jj. September 4, 1996 notice of pre-trial conference from the trial court.

kk. The LSRC's answer filed on September 30, 1996.

ll. The LSRC's motion to depose Darlene Ransome, attorney of record filed on October 31, 1996.

mm. Trial Order sent by trial court.

nn. Consent Judgment between the parties filed on November 15, 1996.

oo. The LSRC's motion to dismiss filed on November 10, 1998.

pp. LDRA's motion to continue hearing on the LSRC's motion to dismiss filed November 18, 1998.

qq. The LSRC's opposition to LDRA's motion to continue hearing filed November 23, 1998.

rr. The trial court's November 30, 1998 order denying LDRA's motion to continue.

ss. LDRA's opposition to the LSRC's motion to dismiss filed on December 1, 1998.

tt. LDRA's motion to enforce Section 16 of consent Judgment, set aside Consent Judgment, reinstate proceedings and discovery and to set trial date filed on December 3, 1998.

uu. LDRA's memorandum in support of motion to enforce Section 16 of Consent Judgment, set aside Consent Judgment, reinstate proceedings and discovery and to set trial date filed on December 3, 1998.

vv. LDRA's dilatory exception of prematurity and preemptory exception of no cause of action filed on December 3, 1998.

ww. LDRA's memorandum in support of dilatory exception of prematurity and peremptory exception of no cause of action filed on December 3, 1998.

xx. LDRA's petition for writ of mandamus filed on December 3, 1998.

yy. The LSRC's motion and incorporated memorandum to quash request for production of documents filed on December 4, 1998.

zz. LDRA's petition for suspensive appeal filed on December 21, 1998.

aaa. LDRA's notice of intent to apply for writs filed on December 21, 1998.

bbb. Trial Court's December 21, 1998 order granting LDRA's suspensive appeal filed on December 21, 1998.

ccc. LDRA's motion to limit the record on appeal filed on January 20, 1999.

ddd. Court's notice of estimated appeal cost filed February 8, 1999.

IT IS FURTHER ORDERED that the records listed herein below be supplemented as a part of the record of this matter instead of as exhibits to the record:

a. Petition for trial de novo and for suspensive appeal filed April 29, 1994 by LDRA in the 21st Judicial District Court.

b. Declinatory exception of improper venue filed June 20, 1999 by the Louisiana State Racing Commission ("LSRC").

c. February 24, 1995 decision of the First Circuit Court of Appeal denying the LSRC's writs of certiorari.

d. April 29, 1995 decision of the Louisiana Supreme Court granting writs of certiorari and transferring the case to the Civil District Court for the Parish of Orleans.

e. Motion to transfer (to consolidate with Suit No. 92-20961) filed by Salvador Anzelmo on March 5, 1996.

f. Motion and order fixing time for filing writs filed by LDRA on March 5, 1996.

g. Notice of intent to apply for writs filed by LDRA on March 5, 1996.

h. Motion to dismiss and alternative motion for declaratory judgment filed by the LSRC on April 4, 1996.

i. Opposition to the motion to dismiss filed by LDRA on April 12, 1996.

j. Supplemental opposition to the motion to dismiss filed by LDRA on May 10, 1996.

k. Petition for suspensive appeal filed by LDRA on May 22, 1996.

l. June 5, 1996 decision of the Fourth Circuit Court of Appeal reversing and remanding case to Civil District Court.

m. Motion and order to enroll Marvin Montgomery as additional counsel filed by LDRA on October 18, 1996.

IT IS FURTHER ORDERED that the Louisiana State Racing Commission submit a complete record of the April 29, 1994 hearing pursuant to the Administrative Procedures Act.

Said supplements to the record shall be returnable to the Fourth Circuit Court of Appeal on or before the 2nd day of November, 1999.

New Orleans, Louisiana this 20th day of Oct., 1999.

/s/ Moon Landrieu
Judge,
Fourth Circuit Court of Appeal
for the panel

APPENDIX G

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

DOCKET NO. 99/CA/1001
C/W NO. 99/CA/1002

JEFFERSON DOWNS CORP., ET AL.

versus

LOUISIANA STATE RACING COMMISSION
Suit No. 92-20961, c/w Suit No. 95-15331, Division "G"
Civil District Court for the Parish of Orleans

MOTION TO WITHHOLD SUBMISSION OF CASE FOR DECISION PENDING RECEIPT OF COMPLETE RECORD FILED ON BEHALF OF LIVINGSTON DOWNS RACING ASSOCIATION, INC.

(Filed Nov – 5, 1999)

SUBMITTED BY:

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(225) 928-2620
DARLENE S. RANSOME,
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AND

**BREAZEALE, SACHSE &
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CLAUDE F. REYNAUD,
BAR ROLL #11197
JUDE C. BURSAVICH,
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AND

**J. MARVIN MONTGOMERY
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(225) 931-5860**

MOTION TO WITHHOLD SUBMISSION OF CASE FOR DECISION PENDING RECEIPT OF COMPLETE RECORD FILED ON BEHALF OF LIVINGSTON DOWNS RACING ASSOCIATION, INC.

NOW INTO COURT, through undersigned counsel, comes Livingston Downs Racing Association, Inc. ("LDRA"), appellant herein, who moves this Honorable Court to withhold submission of the captioned case for decision by the panel pending receipt of documents necessary to complete the record of these proceedings for the following reasons, to-wit:

1.

As evidenced by LDRA's second motion to order the Clerk of Court to complete its record on appeal and to order the Louisiana State Racing Commission to submit the administrative record, the record of this matter was far from complete at the time LDRA filed the motion.

2.

This Court ordered that the record be supplemented on or before November 2, 1999.

3.

On Friday, November 5, 1999, a representative of Ransome Law Firm, L.L.C. reviewed the record before this Court and found that it is still incomplete.

4.

Because LDRA has requested a de novo review and decision be issued by this Honorable Court, it is essential that a complete record of this matter be compiled and delivered to the Court by both the Louisiana State Racing Commission and by the Clerk of the Civil District Court for the Parish of Orleans prior to the submission of this case for decision.

5.

Undersigned counsel has no objection to submitting a reply brief on behalf of LDRA nor to appearing and presenting oral argument as scheduled on November 8,

1999. However, LDRA respectfully urges that a complete record on appeal is essential to the proper adjudication of this matter by this Honorable Court.

WHEREFORE, Livingston Downs Racing Association, Inc. prays, after all briefs have been filed and the oral argument of this matter has been presented, that this Honorable Court withhold submission of this case for decision until the record on appeal has been completed by both the Clerk of the Civil District Court for the Parish of Orleans and/or by the Louisiana State Racing Commission.

Respectfully submitted:

RANSOME LAW FIRM, L.L.C.
5353 Florida Blvd.
Baton Rouge, LA 70806
(504) 928-2620

/s/ Darlene S. Ransome
Darlene S. Ransome (#21983)

AND

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Victor A. Sachse, III, Bar Roll #11645
Claude F. Reynaud, Jr., Bar Roll #11197
Jude C. Bursavich, Bar Roll #19303

AND

J. Marvin Montgomery
Bar Roll #8169
P.O. Box 66124
Baton Rouge, LA 70896
(225) 931-5860

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been mailed, postage prepaid and properly addressed to all counsel of record.

Baton Rouge, Louisiana, this 5th day of November, 1999.

/s/ Darlene S. Ransome
Darlene S. Ransome

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

DOCKET NO. 99/CA/1001
C/W NO. 99/CA/1002

JEFFERSON DOWNS CORP., ET AL.

versus

LOUISIANA STATE RACING COMMISSION
Suit No. 92-20961, c/w Suit No. 95-15331, Division "G"
Civil District Court for the Parish of Orleans

ORDER

Considering the foregoing motion,

IT IS ORDERED that the above entitled and numbered cause shall not be submitted for decision until the record of this matter is complete.

IT IS FURTHER ORDERED that the Clerk of Court for the Civil District Court for the Parish of Orleans and/or the Louisiana State Racing Commission shall supplement this record with the documents on the list attached hereto as Exhibit "A" on or before the close of business on the _____ day of _____, 1999.

_____

Judge,
Fourth Circuit Court of Appeal

APPENDIX H

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NOS. 92-20961 c/w
95-15331

DIVISION "G" DOCKET:
SECTION "11"

LIVINGSTON DOWNS
RACING ASSOCIATION, INC.

versus

LOUISIANA STATE RACING COMMISSION

* * * * * * * * * * *

JUDGEMENT

The above captioned proceeding came for hearing on the merits of defendant, LOUISIANA STATE RACING COMMISSION, Motion To Dismiss on Friday, December 4, 1998:

PRESENT: KIM RAINES CHATELAIN,
Attorney for defendant, Louisiana State Racing Commission

VICTOR A. SACHSE, III
Attorney for plaintiff, Livingston Downs Racing Association, Inc.

DARLENE S. RANSOME
Attorney for plaintiff, Livingston Downs Racing Association, Inc.

After considering the law, the evidence, and for the reasons orally assigned

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of the defendant, Louisiana State Racing Commission, dismissing the above captioned suit by plaintiff, Livingston Downs Racing Association, Inc. against defendant, Louisiana State Racing Commission, with prejudice at plaintiff's cost pursuant to the Consent Judgment entered November 15, 1996.

JUDGMENT READ, RENDERED AND SIGNED this 4 day of December, 1998.

/s/ (Sgd) Robin M. Giarrusso
JUDGE

APPENDIX I

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 92-20961 C/W 95-15331 DIVISION G

LIVINGSTON DOWNS RACING ASSOCIATION

VERSUS

LOUISIANA STATE RACING COMMISSION

JUDGMENT

This matter came for hearing on the 26th day of April, 1996 on Louisiana State Racing Commission's (herein after LSRC) Motion to Dismiss and Alternative Motion for Declaratory Judgment.

PRESENT: MELINDA TUCKER and PAUL SENS, Attorneys for mover, LOUISIANA STATE RACING COMMISSION;

DARLENE RANSON, Attorney for LIVINGSTON DOWNS RACING ASSOCIATION

After hearing the pleadings, evidence and argument of counsel:

IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss filed by LSRC is hereby granted, dismissing the purported appeal filed by Livingston Downs Racing Association at Livingston Downs' costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all other motions are hereby dismissed.

JUDGMENT SIGNED, NEW ORLEANS, LOUISIANA this 14th day of May 1996.

/s/ Robin M. Giarrusso
Robin M. Giarrusso,
Judge Div G

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 92-20961 C/W DIVISION G
95-15331

LIVINGSTON DOWNS RACING ASSOCIATION

VERSUS

LOUISIANA STATE RACING COMMISSION

REASONS FOR JUDGMENT

At issue is whether Livingston Downs took the proper procedural steps to suspend the effect of the order revoking its license. The Court finds that Livingston Downs lost all right to suspensively appeal by its failure to comply with the applicable provision of the racing statutes La.R.S. 4:158.

Some history is in order: The LSRC issued an Order revoking the racing license and privileges of Livingston Downs on April 29, 1994. On the same day, Livingston Downs submitted an order in the 21st Judicial District Court which purported to grant Livingston Downs a suspensive appeal of LSRC's Order and reinstated the

license and racing privileges of Livingston Downs. That Order was signed by a judge of the 21st Judicial District on April 29, 1994.

The LSRC filed an exception of venue in the 21st Judicial District Court, which exception was denied. This denial was affirmed by the First Circuit Court of Appeal. The LSRC sought supervisory writs from the Louisiana Supreme Court. The Supreme Court granted the exception of venue and ordered these proceedings transferred to Civil District Court for the Parish of Orleans. The Supreme Court found that La.R.S. 4:145.1 provides exclusive venue for legal action against the LSRC and that the 21st Judicial District was an improper venue for Livingston Downs' suspensive appeal of the Order of the Racing Commission of April 29, 1994.

It is well-settled that venue for an action against a state agency or commission is jurisdictional and non-waivable. When a statutory jurisdictional venue provision vests exclusive venue in a particular court, only that court has subject matter jurisdiction. See *Mire v. Hawkins*, 147 So. 2d 892 (La. App. 3d Cir. 1962), writ denied, 244 La. 116, 150 So.2d 584, 1963, *Vincent v. Hunt*, 221 So. 2d 577 (La. App. 3d Cir. 1969).

Because the 21st Judicial District Court was not a proper venue for the Livingston Downs Suspensive Appeal and because venue under the provisions of Louisiana Revised Statutes 4:145.1 is jurisdictional, the 21st Judicial District Court lacked subject matter jurisdiction to grant a suspensive appeal from the Racing Commission Order of April 29, 1994. *Vincent v. Hunt*, supra. Therefore, the Order of Suspensive Appeal, granted by

the 21st Judicial District Court on April 29, 1994, is void and of no effect. See La. Code of Civil Procedure article 3: "A Judgment rendered by a Court which has no jurisdiction over the subject matter of the action or proceeding is void." Compare LSA–C.C.P. art 44.

Plaintiff, Livingston Downs, did not move for an Order of Suspensive Appeal from the Courts of the Parish of Orleans, which is the only court with jurisdiction over the Racing Commission. Under the provisions of La. R.S. 4:158, a party aggrieved by the revocation of a racing license or racing privileges must take a suspensive appeal "within ten (10) days of the notification of the commission's decision."

Livingston Downs failed to perfect a suspensive appeal of the Racing Commission Order of April 29, 1994, within the ten (10) days prescriptive period set forth in La. R.S. 4:158 A. Accordingly, Livingston Downs' right to take a suspensive appeal from the Racing Commission Order of April 29, 1994 has prescribed.

Because the Racing Commission's Motion to Dismiss is granted, the Court need not address the Racing Commission's alternative motion.

SIGNED, NEW ORLEANS, LOUISIANA this 14th day of May 1996.

/s/ Robin M. Giarrusso
Robin M. Giarrusso, Judge Div G

APPENDIX J

LIVINGSTON DOWNS RACING ASSOCIATION, INC.	*	No. 96-C-1215
	*	COURT OF APPEAL
VERSUS	*	FOURTH CIRCUIT
LOUISIANA STATE RACING COMMISSION	*	STATE OF LOUISIANA

ON CERTIORARI TO THE
CIVIL DISTRICT COURT, PARISH OF ORLEANS
NO. 95-15331, DIVISION "J"
HONORABLE ROBIN GIARRUSSO, JUDGE

(Filed June 5, 1996)

PATRICK M. SCHOTT
CHIEF JUDGE

(Court composed of Chief Judge Patrick M. Schott, Judge Moon Landrieu and Judge Patricia R. Murray)

DARLENE S. RANSOME
Baton Rouge, Louisiana 70806

AND

VICTOR A. SACHSE, III
CLAUDE F. REYNAUD
JUDE C. BURSAVICH
BREAZEALE, SACHSE & WILSON
Baton Rouge, Louisiana 70821
(Counsel for Plaintiff-Relator)

RICHARD P. IEYOUB
ATTORNEY GENERAL
MELINDA M. TUCKER
ASSISTANT ATTORNEY GENERAL
PAUL N. SENS
ASSISTANT ATTORNEY GENERAL
New Orleans, Louisiana 70119-5111
(Counsel for Defendant-Respondent)

REVERSED AND REMANDED;
STAY ORDER RECALLED

On the application of Livingston Downs Racing Association, Inc., relator, we grant certiorari in order to consider the validity of the judgment of the trial court granting the motion of Louisiana State Racing Commission, dismissing relator's suspensive appeal from the Commission's decision to revoke relator's license.

Relator was notified that its license "to conduct race meets" had been revoked by the Commission at its meeting held on April 29, 1994. Relator's remedy was set out in LSA-R.S. 4:158 as follows:

> Should the commission . . . revoke an association's license . . . said association may within ten days of the notification of the commission's decision take a suspensive appeal to the district court having jurisdiction over the association's track. Such appeals shall be filed in the district court in the same manner as original suits are instituted therein. The appeals should be tried de novo. Either party may amend and supplement his pleadings and additional witnesses may be called and heard.

On April 29, 1994, relator filed its suspensive appeal in the Twenty-First Judicial District Court for the Parish

of Livingston where relator's track was to be operated. The Commission filed an exception to the venue of Livingston Parish which was overruled by the trial court on September 27, 1994. This judgment was reversed by the Supreme Court on April 28, 1995, with the explanation:

> Exception of venue sustained. La. R.S. 4:145.1. Case transferred to the Civil District Court for the Parish of Orleans.

Although the judgment of the Supreme Court became final on June 16 when rehearing was denied, nothing happened until September 8 when the Livingston Parish Clerk of Court transferred the record to the Civil District Court. On April 4, 1996, the Commission filed its motion to dismiss relator's petition and on May 15 the trial court rendered its judgment granting the Commission's motion and dismissing relator's suspensive appeal. On May 19, relator filed a petition in the trial court for a suspensive appeal to this court, but on May 21 the trial judge denied the suspensive appeal and granted a devolutive appeal. On May 23, relator filed in this court an application for supervisory writs with respect to the May 15 judgment and a request for a stay order. We issued a stay order and secured a response to relator's application prior to the present grant of certiorari.

Before reaching the merits of the judgment of the trial court, we must consider the Commission's argument that the exercise of our supervisory jurisdiction is somehow prohibited by R.S. 4:158. In pertinent part this statute provides the following remedy for the unsuccessful litigant who has taken a suspensive appeal to the district court from a decision of the Commission:

> Within ten calendar days of the signing of the judgment by the district court in any such appeal case, the commission or the applicant for a license or licensee, as the case may be, may suspensively appeal the judgment to the appellate court of proper jurisdiction. These appeals shall be perfected in the manner provided for in civil cases and shall be suspensive or devolutive in the discretion of the court.

While this statute provides the litigant with the right to take an appeal and restricts the time in which such an appeal may be taken to only ten days instead of the general rules found in C.C.P. arts. 2087 and 2123, the statute does not purport to prevent or prohibit the litigant from invoking the supervisory jurisdiction of the appellate court. The power of the court of appeal to exercise its supervisory jurisdiction is conferred by the Constitution, art. V, § 10(A) and is recognized by law. C.C.P. art. 2201. Neither the Constitution nor the statutes prohibit the appellate court from exercising its supervisory jurisdiction in this sort of case.

On the other hand, the difference between supervisory jurisdiction and appellate jurisdiction is that the former is discretionary on the part of the appellate court while the latter is invocable by the litigant as a matter of right. As a general rule, the court of appeal does not exercise its discretionary supervisory jurisdiction in the absence of a showing that the failure to do so will result in irreparable injury. Where an appeal would provide an adequate remedy there would normally be no irreparable injury and the court would not issue certiorari to review the judgment complained of.

We have resolved that this case is an appropriate one for the exercise of our supervisory jurisdiction. The statutory scheme found in R.S. 4:158 leaves no doubt but that the legislature intended for the procedure for judicial review of a decision by the Commission to be expeditious. For example, the ten day period provided for judicial review of a Commission decision contrasts sharply with the thirty day period provided by the Administrative Procedure Act, R.S. 49:964(B). The ten day period for an appeal also contrasts with the normal periods for taking appeals as mentioned above and applicable to the Administrative Procedure Act – R.S. 49:965. Also, R.S. 9:158 specifically mandates the appellate court to give precedence to a case such as this over other civil cases.

The present case is readily susceptible to disposition on the record before us. Furthermore, as will be seen, the judgment under consideration is clearly erroneous. The interests of justice would not be served were we to decline to exercise our supervisory jurisdiction and allow the appeal taken by relator to take its course. To do so would trigger a delay of several months and the ultimate result would clearly be the same as the one we are now prepared to reach. Parenthetically, we note that an inordinate length of time passed between the date when the judgment of the Supreme Court became final and the date the judgment of the district court was rendered. Each party blames the other for this delay, and, while it is not necessary for us to fix the blame for the delay, it does appear that each party bears some responsibility for it. More diligence on the part of either would have provoked a much earlier resolution. In any event, it

behooves this court to put an end to the delay and provide an expeditious resolution of the controversy to the extent that we are able. In reasons for judgment the trial judge found as follows:

> It is well-settled that venue for an action against a state agency or commission is jurisdictional and non-waivable. When a statutory jurisdictional venue provision vests exclusive venue in a particular court, only that court has subject matter jurisdiction. See *Mire v. Hawkins*, 147 So.2d 892 (La. App. 3d Cir. 1962), *writ denied*, 244 La. 116, 150 So.2d 584, 1963, *Vincent v. Hunt*, 221 So.2d 577 (La. App. 3d Cir. 1969).

The trial judge reasoned that the filing of relator's petition for suspensive appeal in Livingston Parish, which lacked subject matter jurisdiction, was without effect and could not interrupt the ten day prescriptive period set out in R.S. 4:158 for filing such action. This reasoning is erroneous. In the *Mire* case, suit was filed against the Conservation Commissioner in the Parish of Acadia. An exception to the court's lack of jurisdiction over the person of the defendant was filed because law required the suit to be filed in East Baton Rouge Parish. The appellate court held that the exception was properly sustained because East Baton Rouge Parish was "the proper *venue* for bringing suit." In that case, the trial court had also sustained an exception to the court's lack of jurisdiction over the subject matter which was based upon the plaintiffs' failure to exhaust administrative remedies, but the appellate court pretermitted discussion and disposition of this exception.

Similarly, in the *Vincent* case the court affirmed the trial court's judgment again on the ground that only East Baton Rouge Parish and not St. Charles Parish was the proper venue for a suit against the Commissioner of Conservation. Unfortunately, the *Vincent* court engaged in some erroneous dicta with respect to non-waivable or so called "jurisdictional" venue found in C.C.P. art. 44. However, this article provides that venue may not be waived only in certain specified types of proceedings, none of which has application to the action in the *Vincent* case or to the present case.

The trial court in the present case as well as the Third Circuit in the cited cases seem to confuse jurisdiction over the person, C.C.P. art. 925(5) and improper venue, art. 925(4) with jurisdiction over the subject matter, art. 925(6). This article flatly declares that all the exceptions of art. 925 except as to subject matter may be waived including venue and jurisdiction over the person. Consequently, the trial court erroneously equated subject matter jurisdiction with personal jurisdiction and venue. Finally, C.C.P. art. 932 provides that an action brought in a court of improper jurisdiction or venue may be transferred to a proper court.

In the present case the Supreme Court held that relator's suit was filed in a court without venue over the Commission, and pursuant to art. 932, it transferred the case to the court of proper venue. Even though filed in the wrong venue, service on the Commission was made within the ten day period prescribed by R.S. 9:158 so that prescription was interrupted. C.C. art. 3462.

Accordingly, the judgment of the trial court dismissing relator's suspensive appeal from the Commission's ruling is reversed and set aside. The case is remanded to the trial court for proceedings in accordance with R.S. 9:158. This court's stay order of May 23 is recalled.

REVERSED AND REMANDED;
STAY ORDER RECALLED.

APPENDIX K

The Supreme Court of the State of Louisiana

LIVINGSTON DOWNS RACING ASSOCIATION

VS. **NO. 96-CC- 1750**

LOUISIANA STATE RACING COMMISSION

IN RE: Louisiana State Racing Comm.; – Defendant(s); Applying for Supervisory and/or Remedial Writs; to the Court of Appeal, Fourth Circuit, Number-96CW-1215; Parish of Orleans Civil District Court Div. "J" Number 95-15331

September 3, 1996

Denied.

WFM

HTL

CDK

BJJ

JPV

CALOGERO, C.J. not on panel.

WATSON, J. would grant the writ.

BLEICH, J. would grant the writ.

Supreme Court of Louisiana
September 3, 1996

/s/ Illegible
Clerk of Court
For the Court

APPENDIX L

LIVINGSTON DOWNS RACING ASSOCIATION	NUMBER: 71137 DIVISION: F 21ST JUDICIAL DISTRICT COURT
VERSUS	PARISH OF LIVINGSTON
LOUISIANA STATE RACING COMMISSION	STATE OF LOUISIANA

PETITION FOR TRIAL DE NOVO AND FOR SUSPENSIVE APPEAL

(Filed April 29, 1994)

NOW INTO COURT, through undersigned counsel, comes Livingston Downs Racing Association, Inc. (Livingston Downs) who with respect represents as follows:

1.

Made defendant herein is Louisiana State Racing Commission, an agency of the State of Louisiana.

2.

Livingston Downs is a racing association duly licensed by the Racing Commission to conduct live horse racing meets in Livingston Parish.

3.

On April 29, 1994, the Racing Commission suspended and/or revoked Livingston Downs' license, and/or terminated the racing privileges granted to Livingston Downs

4.

Pursuant to LSA – R.S. 4:158(A) Livingston Downs is entitled to a suspensive appeal from the decision of the Racing Commission suspending and/or revoking Livingston Downs' license and/or terminating Livingston Downs' racing privileges.

5.

Pursuant to LSA – R.S. 4:158(A) the appeal from the ruling of the Racing Commission shall be filed in the district court having jurisdiction over Livingston Downs' track, which is 21st Judicial District Court for the Parish of Livingston, and such appeal shall be filed in the same manner as an original suit.

6.

Pursuant to LSA – R.S. 4:158(A), the appeal from the decision of the Racing Commission shall be tried de novo.

7.

Pursuant to LSA – R.S. 4:160, the Racing Commission may only suspend and/or revoke Livingston Downs' license and/or terminate Livingston Downs' racing privileges for "just cause," and the Commission did not have just cause to suspend and/or revoke Livingston Downs' license or to terminate its racing privileges.

WHEREFORE, Livingston Downs prays:

I. That the Court immediately grant Livingston Downs a suspensive appeal from

the decision of the Racing Commission suspending and/or revoking Livingston Downs' license and/or terminating Livingston Downs' racing privileges;

II. That the Racing Commission be cited to appear and answer this Petition within the delays provided by law;

III. That there be trial de novo on the decision of the Racing Commission to suspend and/or revoke Livingston Down's license and/or terminating Livingston Downs' racing privileges;

IV. That after due proceedings had, there be judgment herein in favor of Livingston Downs and against the Racing Commission, reinstating Livingston Downs' license, and reinstating Livingston Downs' racing privileges;

V. For all relief that is just and equitable under the circumstances.

Respectfully Submitted,

By Attorneys,

DUPLECHAIN & MARTIN
A Professional Law Corporation
4949 Essen Lane, 12th Floor
Baton Rouge, La. 70809
Telephone: (504) 769-1206

By: /s/ Joseph R. Martin
JOSEPH R. MARTIN
(BRN#14169)

PLEASE SERVE:

The Louisiana State Racing Commission
through its Chairman, Oscar Tolmas
320 N. Carrollton Ave.
Suite 2-B
New Orleans, La. 70119

LIVINGSTON DOWNS RACING ASSOCIATION	NUMBER: 71137 DIVISION: F 21ST JUDICIAL DISTRICT COURT
VERSUS	PARISH OF LIVINGSTON
LOUISIANA STATE RACING COMMISSION	STATE OF LOUISIANA

ORDER

(Filed April 29, 1994)

Considering the above and foregoing Petition for Trial De Novo and for Suspensive Appeal, and after considering the law concerning the right of Livingston Downs Racing Association, Inc. to suspensively appeal from the decision of the Racing Commission suspending and/or revoking its license and/or terminating its racing privileges;

IT IS ORDERED, ADJUDGED AND DECREED that Livingston Downs be and hereby is granted a suspensive appeal from the decision of the Racing Commission on April 29, 1994 suspending and/or revoking Livingston Downs' racing license and/or terminating Livingston Downs' racing privileges;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the license of Livingston Downs Racing Association, Inc. be and hereby is reinstated and the racing privileges of Livingston Downs Racing Association, Inc. be and hereby are reinstated until further of this Court.

Livingston, Louisiana this 29th day of April, 1994, at 11:45 A.M. o'clock a.m.

/s/ _____
JUDGE, 21ST JUDICIAL
DISTRICT COURT

lm

[1]

LOUISIANA STATE RACING COMMISSION

MEETING OF THE LOUISIANA
STATE RACING COMMISSION
HELD ON FRIDAY, APRIL 29, 1994 AT 9:00 A.M.
IN THE GRAND BALLROOM, GRAND ISLE HOTEL
(FORMERLY QUALITY INN),
AT 3033 HILTON DRIVE
BOSSIER CITY, LOUISIANA 71111.

REPORTED BY: SYLVIA C. PASTRANO
CERTIFIED SHORTHAND REPORTER

- 0 -

CERTIFIED
A TRUE COPY
/s/ Paul D. Burgess
Executive Director
Louisiana State Racing Commission

[2]
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MR. TOLMAS:

Will the commissioners please be seated. The meeting will now come to order. We now have the commissioners roll call, please.

BY MR. BURGESS:

Q. Oscar Tolmas?
A. Present.
Q. W. C. Littleton?
A. Here.
Q. Albert Stall?
A. Present.
Q. Payton Covington?
A. Present.
Q. R .J. D'Agostino?
A. Present.
Q. Sue Granger?
A. Present.
Q. Cynthia Morrell

MR. STALL:

Absent.

Q. Peter Smith?
A. Present.
Q. James Thomas?
A. Present.
Q. Dale Vinet?

[4]

A. Here.
Q. Melinda Tucker?
A. Here.
Q. Tino Rieger?
A. Present.
Q. Jimmy Gregoire?
A. Here.
Q. Charles Webb?
A. Here.

Q. Judy Dugas?
A. Present.
Q. Mr. Lee Berwick?
A. Here.
Q. Mr. Bill Fogelman?
A. Here.
Q. Mr. Mervin Muniz?
A. Here.
MR. BURGESS:
We also have Mr. Brent Seward with Mervin.
Q. Mr. Al Ransome?
A. Here.
Q. Mr. Joe Martin?
A. Here.
Q. Mr. Ray Tromba?

[5]

A. Here.
Q. Charles Salley?
A. And Jimmy Magallis.
Q. Lieutenant Robinson?
A. Here.
Q. Dr. Steven Barker?
A. Present.
Q. Dr. Kamerling?
A. Present.
Q. Harold Delahoussaye?
A. Here.
Q. Mr. James Gelpi?
A. Here.
Q. Johnny Beech?
A. (There was no answer.)
Q. Mr. Tom Early.
A. (There was no answer.)
Q. Mr. Leverne Perry?
A. Here.
Q. Dr. Norwood?
A. (There was no answer.)

Q. Are there any members of the press that would like to recognized at this time?

A. (There was no answer.)

MR. TOLMAS:

[6]

We will now read the minutes of the previous meeting. Motion in lieu of reading the minutes.

MR. STALL:

So moved, Mr. Chairman.

MR. TOLMAS:

It's been moved the reading of the minutes be waived. Is there a second?

MR. PETER SMITH:

Second

MR. TOLMAS:

All in favor say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

Opposed? (None) Motion is approved. Now go to the approvals and ratifications. Delta Downs.

MR. BURGESS:

Mr. Chairman, we have the days for 94-95 meet for Delta Downs. The thoroughbred racing season: Racing on the flat for 86 days from September 16, 1994 through March 26, 1995 with 10 races Thursday, Friday, Saturday, post time 6:15 p.m. and 10 races on Sundays and holidays at 1:15 p.m. February the 19th through March the 26th, 1995. The 1995 quarter horse racing season: Racing on the flat for 56 days from March 31, 1995 through July 4, 1995 with 10 races Thursday, Friday, Saturday, post time 6:15 p.m. and 10 races Sundays and holidays with a 1:15 p.m. post time.

The wagering format is exacta wagering on all races except the first; trifecta wagering on six races. Quinella wagering on all races. Two daily doubles; pick 3 on races seven, eight and nine. Delta Downs will be serving as concessionaire for both race meets.

MR. TOLMAS:

Ms. Dugas, as steward at Delta Downs, state steward at Delta Downs have you read all this and approved it?

MS. DUGAS:

Yes, I have.

MR. TOLMAS:

Let the record reflect that.

MR. STALL:

So moved for approval, Mr. Chairman.

MR. PETER SMITH:

I second approval.

MR. TOLMAS:

[8]

All in favor of the motion say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

Opposed? (None) Motion is approved. Mr. Burgess.

MR. BURGESS:

The next item is ratification for request to simulcast entire race cards via common pool wagering from Sportsman's Park, the dates on page three on the agenda; from Garden State Park, the dates on page three; to Wyoming, dates on page three, to LeBois State Park, dates on page three. That concludes all for Delta.

MR. TOLMAS:

There is a motion for ratification.

MS. GRANGER:

I move for approval.

MR. TOLMAS:

Second?

MR. VINET:

Second.

MR. TOLMAS:

All in favor say aye.

COMMISSION MEMBERS:

[9]

Aye.

MR. TOLMAS:

Motion is approved. Evangeline Downs.

MR. BURGESS:

Ratification of simulcast via common pool wagering from Keenland, dates as listed on page three. From Garden State Park, dates as listed on page three. To Garden State Park, dates as listed on page three. From Hialeah, dates as listed on page three. From Santa Anita Park, dates as listed on page three. To Trinity Meadows, dates as listed on page four. To Atlantic City, dates as listed on page four. From Sportsman's Park, dates as listed on page four. From Churchill Downs, dates as listed on page four. From Hollywood Park, dates as listed on page four.

MR. VINET:

So moved.

MR. PETER SMITH:

Second.

MR. TOLMAS:

All in favor say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

[10]

Opposed? (None) Motion is approved.

MR. BURGESS:

Mr. Chairman, the next item for Evangeline is filed simulcast OTB agreements with Delta Downs, the Fair Grounds at its OTB locations, Winners Circle OTB in Alexandria, Winners Circle OTB in Mound and Louisiana Downs.

MR. PETER SMITH:

Moved.

MR. VINET:

Second.

MR. TOLMAS:

All in favor say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

All opposed? (None) Motion carries.

MR. BURGESS:

The next item is ratification of designated races at Evangeline Downs as listed on page four and approved by the state steward.

MR. PETER SMITH:

So moved.

[11]

MR. VINET:

Second.

MR. TOLMAS:

All in favor say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

Opposed? (None) Motion is approved.

MR. BURGESS:

Fair Grounds requests approval for 1994-95 racing season. The Fair Grounds -- Mervin, you have requested to go with option two?

MR. MUNIZ:

Fair Grounds would elect to go with option No. 2 -- Thursdays through Mondays schedule for our next meeting.

MR. TOLMAS:

Thank you.

MR. BURGESS:

And the option two schedule appears on page four of the LSRC agenda.

MR. PETER SMITH:

I move.

MS. GRANGER:

[12]

Second.

MR. TOLMAS:

All in favor say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

Opposed? (None)

MR. TOLMAS:

Approved.

MR. BURGESS:

Next item is betting format for the Fair Grounds: Up to 12 races daily; exacta and quinella on all races; five trifectas daily; super 6 on races three through eight; rolling pick 3 beginning on fourth race; two daily doubles on race one and two and the last two races.

MR. TOLMAS:

You need to read the next item, Paul.

MR. BURGESS:

And the Fair Ground also requests Fair Grounds Corporation as concessionaire and caterer.

MR. TOLMAS:

Is there a motion?

MR. PETER SMITH:

[13]

I move.

MR. VINET:

Second.

MR. TOLMAS:

All in favor say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

Opposed? (None) Approved.

MR. BURGESS:

Mr. Chairman, we have an item on page five for the Fair Grounds request to simulcast entire race cards via common pool wagering from Santa Anita Park, dates as

listed on page five. From Keenland, dates as listed on page five; from Churchill Downs, dates as listed on page five.
MS. GRANGER:
Move for approval.
MR. VINET:
Second.
MR. TOLMAS:
All in favor of the motion say aye.
COMMISSION MEMBERS:
Aye.
MR. TOLMAS:
[14]
Opposed? (None) Motion is approved. Livingston Downs.
MR. BURGESS:
Mr. Chairman.
MR. TOLMAS:
The first item on the agenda deals with the -- go ahead.
MR. BURGESS:
Go ahead, Mr. Chairman.
MR. VINET:
Mr. Chairman, I think Louisiana Downs had a request that maybe we could take them before Livingston Downs because they have a race track to open tomorrow.
MR. MARTIN:
We have no objection to that, Mr. Chairman.
MR. VINET:
If you could change the agenda.
MR. TOLMAS:
Louisiana Downs.
MR. BURGESS:
Mr. Chairman, the first item under Louisiana Downs is ratification of C. L. Webb as state steward for the 1994 race meet.
[15]
MS. GRANGER:

Move for approval.

MR. STALL:

Do we know his credentials?

(Laughter)

MR. TOLMAS:

Everybody knows Mr. Webb.

MR. TOLMAS:

Is there a motion?

MR. STALL:

So moved.

MR. THOMAS:

Second.

MR. TOLMAS:

Is there a second?

MR. THOMAS:

Second.

MR. TOLMAS:

All in favor of the motion.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

Opposed? (None) Motion carries. Congratulations, Mr. Webb.

MR. WEBB:

[16]

Thank you, I appreciate it.

MR. BURGESS:

Next item for Louisiana Downs is ratification of request to simulcast entire race cards via common pool wagering is Hollywood Park, dates as listed on page five. From Sportman's Park, dates as listed on page five. From Thistledown, dates as listed on page five. From Remington Park, dates listed on page five. From Fonner Park, dates as listed on page five. From National Jockey Club, dates as listed on page five. To Oaklawn Park, dates as listed on page five. To Arapahoe Park, dates as listed on page five.

To the following associations from April 30 to November 13, 1994: Atokad Park, State Fair Park, Garden State Park, Douglas Racing Corporation, Manor Downs, Columbus Races, Bandera Downs, Race Cards, Limited. To the Meadowlands, dates as listed on page five. That is all of the items under there.

MR. PETER SMITH:

I move.

MR. VINET:

Second.

MR. TOLMAS:

All in favor of the motion say aye.

COMMISSION MEMBERS:

[17]

Aye.

MR. TOLMAS:

All opposed say no? (None) Motion is adopted.

MR. BURGESS:

We now return to Livingston Downs.

MR. MARTIN:

Mr. Chairman, we have no objection if you wanted to dispose of that Louisiana Quarter Horse Breeder Association for approval of the 1995 Mardi Gras Futurity and Derby, if you want to go ahead and do that.

MR. TOLMAS:

Yes, let's dispose of that. Louisiana Quarter Horse Breeders Association. Paul.

MR. BURGESS:

Request approval for the 1995 Mardi Gras Futurity and Derby.

MS. GRANGER:

I so move.

MR. PETER SMITH:

Second.

MR. TOLMAS:

All in favor say aye.

COMMISSION MEMBERS:

[18]

Aye.

MR. TOLMAS:

Opposed? (None) Motion is approved.

Livingston Downs. The first item on the agenda is the application for license to operate OTB facility per revised statute 4:213 and 214 (D). Ms. Tucker will fill us in.

MS. TUCKER:

On April the 18th of this year, Judge Keogh in case No. 399,563, Division "M" of the 19th Judicial District Court of Parish of East Baton Rouge rendered a Judgment granting the Motion for Summary Judgment filed on behalf of the State of Louisiana and intervenor of the Fair Grounds and against the plaintiff, Livingston Downs, and dismissed the lawsuit which was filed by Mr. Martin on behalf of Livingston Downs at their cost. And in his written reasons for judgment which were rendered on April the 12th, Judge Keogh upheld the constitutionality of the 1986-87 provision in the Rules of Racing which would preclude Livingston Downs from obtaining a license to conduct off-track wagering. I have not received anything from Mr. Martin that indicates that that matter is going to be appealed; however, with respect

[19]

to the commission, the issue is final.

MR. MARTIN:

We have filed our appeal yesterday. It is not a suspensive appeal for anything, so Judge Keogh's decision stands. I would point out to the commission, and I think Ms. Tucker was there and understands, Judge Keogh did rule on the constitutionality, and he did rule on certain conflicts that we pointed out in the statute, however Judge Keogh's written reason's did address the conflict that appears in Section 213 of the off-track wagering law which grants any association licensed by the commission, which would include Livingston Downs, the right to engage in off-track wagering facilities and the other two definitions contained in section 211 of the

off-track wagering law which purport to limit that right to associations that were licensed in 1986-87. Judge Keogh did state from the bench that he thought it was the responsibility of the racing commission to resolve that statutory conflict. We have made this application, and we want to be very clear that this application applies to what we refer to -- for a lack of statutory definition -- a better word is an on-site, off-track wagering facility which would be an off-track only at the facility in Livingston Parish. It would

[20]

not include rights to be in any other parish. It would not include rights to have any other off-track wagering facility, so we still believe that there is a statutory contradiction that exists that should in the first instances be resolved by the racing commission, and we would ask the racing commission to take a look at those two statutes that I mentioned.

If you look at 214 (D) which gives us the right to have the on-site, on-track betting parlor, we believe that the definitions that we have complained of for a couple of years now do not come into play, if you read section 213 and Section 214. So, by this application, we are asking for the sole right to operate on site. Of course, if we never built the site, we wouldn't have the right.

MR. STALL:

Mr. Chairman, may I ask a question.

MR. TOLMAS:

Mr. Stall.

MR. STALL:

Aren't these 213, 214, they are all predicated on conducting live racing first?

MR. MARTIN:

There is an argument to be made for that and an argument to be made on the other side. You see

[21]

the position we have always been in, we have always been in the position of somebody that wants to go out and build a house. You don't build a house and then go for a building

permit. If we have clearly defined rights going in, if we have the right to operate an on-site OTB at the facility that we build, then this is all going to be pertinent in the next issues that we discuss in the financing and everything. We have continually met with folks that were interested in the racetrack project with the proviso that, when you clarify your off-track betting situation, come back to see us, and we will be happy to talk to you then.

So, we are in a catch 22. We are in a position that we are going to have to really test it, we are going to have to go out and build a racetrack and then come and see. If we have a ruling that, if and when we build a racetrack, we will have a right to operate that racetrack as an off-track wagering facility, we can do the project.

MS. TUCKER:

Mr. Martin, wouldn't it have been more prudent to change the off-track wagering statute first rather than go build a racetrack and then come and say, but we don't like the fact that the 86-87 provision precludes us from the off-track betting

[22]

facility? It sounds like the cart before the horse to me.

MR. MARTIN:

Immediately after Mr. Ransome initially applied to this commission for anything in October of 1992, in the regular session of 1993, Livingston Downs approved two or three different bills. I know it was two bills before. I don't remember the proposal that we sent in, but the first bill that we did was to remove the definitions in 211, five and seven that had the definitions that restricted off-track wagering facilities to those associations licensed in 1986 and '87. That is exactly what we did, Ms. Tucker. We are citizens of this State, and we know that we go to our legislators to make those proposals. That is what we were trying to do. There were -- I can't remember the biggest thing going on in the 1993 legislature, but our legislation never made it out of committee. At that time we were under the Commerce

Committee which now the name changed to Department of Economic Development, but it is still the same committee, the same committee members. That legislation never made it out of committee. We will reintroduce it. We can't introduce it this time. I guess maybe we could say it was a fiscal matter. If we

[23]

get it, there is going to be a lot of tax revenues, but we simply can't get it through this session. Next session we will try again.

MR. STALL:

Mr. Martin, realizing the fact that all the tracks that now exist in the State of Louisiana were there first and then OTB followed. It is a catch 22, but statute is clear, as far as I am concerned, and I am not a lawyer, but I have been advised obviously by the judge's decision. But of all the tracks in the U.S. that I know of, I don't know of any, including the ones being built, like the one opening today in Texas and the others, that the track was up and running before they got the right to conduct as an OTB parlor when they were dark or when they were not racing live races. I know (inaudible-overlap) is not that way and I know the one in San Antonio is not and I know that Sam Houston is not. Those are three newest o that I know of, class-one tracks.

MR. MARTIN:

I understand what the concern is, belive me. The concern is, and I think it's been voiced by Ms. Tucker, and I don't think it's ever been officially voiced by the racing commission, but we should get this out in the open. The concern is that

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Mr. Ransome and Livingston Downs will go to Livingston Parish and open a truck stop and in addition to that have a license to operate a racetrack. Under that scenario, they will be able to put unlimited amounts of video poker machines in and operate as a truck stop, would not limit it to 50 video poker machines, but have unlimted video poker machines

and come back to this commission for year after year and never open the racetrack. We are working on it, give us a little more time, we are going to get it going. That is a legitimate concern, and we are willing to do anything that this commission wants us to do to address that concern. The license can be issued provisionally. It can be issued provisionally that we are not allowed to do anything other than the truck stop license limited to 50. We are not allowed to do it until the racetrack is under construction, it looks like we have a real project out there.

MR. STALL:

Who issues the truck stop license?

MR. MARTIN:

That is the state police.

MR. TOLMAS:

We would be infringing on their jurisdiction if we start limiting the companies to

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machines or truck stops or motels also or whatnot.

MR. MARTIN:

Chairman Tolmas, this is not the first -- believe me. Some of you folks have been through the whole history of Livingston Downs what we have tried to do. You start off with a proposition when we had to go get the referendum election. Livingston Parish had to give the Secretary of the State 45 days notice, but the police jury had to call the election within 30 days. Everything we have done, we are stuck with the body of law that we have, and unfortunately, nobody ever read the thing through trying to reconcile all the differences.

MR. TOLMAS:

This is not unique for Livingston Downs. Everybody has these same laws. Everybody had to abide by these same law.

MR. MARTIN:

That's correct, but nobody has tried to open a racetrack since Louisiana Downs came in to. Am I correct,

they are the last ones to be licensed? Before that time and since that time.

MR. TOLMAS:

The laws have not changed since then, have they?

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MR. MARTIN:

Yes, they have. The Election Code has come in, the Off-Track Wagering Law has come in, and that happens when you start. You have one body of law in 1980, then you amend it in '83, '86, all the way up, then you pass the Election Code. You start overlaying all these provisions that apply to the same subject matter. We have been faced with horrible contradictions in statutes, and we have done it the only way possible, starting from just calling the referendum election. If you read the two statutes, literally, it's impossible to have a referendum. We did it the only way it was possible to do to comply with the Election Code and the horse racing statutes, and we have caught flack for doing it that way ever since. We still do.

All we are trying to do is get a racetrack built, and we understand the concerns that this racetrack, believe me, Livingston Parish folks don't want us out there just running a huge truck stop with unlimited video poker machines for years, installing and building the racetrack. Everybody wants the racetrack built. That is we want, too.

MR. THOMAS:

Can I ask Mr. Martin a question?

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MR. TOLMAS:

Yes.

MR. THOMAS:

Mr. Martin, we have been through this, you said since 1992, and I think I sat on the commission when you all were talking about wanting a license or wanting the investigation of a license, the emergency of us acting on it as fast as we could was for you all to build the racetrack.

MR. MARTIN:

Yes, sir.

MR. THOMAS:

The racetrack was the most important thing. There wasn't anything about video poker, or it wasn't anything about OTB. In other words, the horsemen needs a racetrack.

MR. MARTIN:

Yes, sir.

MR. THOMAS:

Jefferson Downs closed, we need a racetrack. That was the whole -- the whole point that we were delaying and holding up from getting a racetrack started. We had the financing, we got everything going. You -- we give you the permit. Now you can't build the track. We can't build the track,

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our track is no good unless we have OTB. So, I mean, you all are sitting here hammering the same thing and the whole intent the way I see it is that, all you wanted was the OTB to start with.

MR. MARTIN:

I hope I would be able to convince you otherwise. On December 10th, 1992, this commission voted unanimously to grant Livingston Downs the license which enabled it to go to Livingston Parish and apply for referendum election. On December 11th, the other five racetracks filed suit to block that effort. It would take me some doing, Mr. Tolmas, to sit and count the number of lawsuits and the number of efforts that have been made to prevent -- just simply prevent Livingston Downs from getting to that referendum election: The lawsuit filed in Orleans Parish to challenge this commission's unanimous ruling. The lawsuit filed in Livingston Parish to try to block the election. Motions made in Orleans Parish litigation to stop the Secretary of State from printing ballots. Polls done in Livingston Parish financed in part by the Committee to Control Gambling which was financed in part or in whole by Jefferson Downs and Fair Grounds. It's been a bloody battle, Mr. Thomas. In

any project, in order to get you financing forward, from whether

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it's a bank or investor or anything, it has to be financially viable. Without the ability to operate at least the racetrack facility, and it's got to be a racetrack facility. It can't just be -- we could take a road crater out there, cut a circle and get some Mardi Gras grandstands and run racing. We have actually considered that.

MR. THOMAS:

Well, the point I am getting at, I understand all the problems, but I don't think the racing commission has brought all those up.

MR. MARTIN:

You haven't, but.

MR. THOMAS:

The point I am asking you, is what is holding you up from building the track today or pulling up and opening this racetrack? What is holding this up? Can you tell me that?

MR. MARTIN:

Yes, sir. Our inability to tell either a lender, a traditional lender, such as a bank or a life insurance company or an investor who would take money out of his pocket and put into the project. Our inability to tell either a lender or an investor that we do have or do not have any rights or some

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rights to operate as an off-track wagering facility. Under section 149.2, which is not in the Off-Track Wagering Law, which was passed I believe in 1983, before that, before off-track wagering came in, it's called "other track wagering." If we have those rights, if we simply had those rights, we would have a project that the performance would show to be financially viable, that it wouldn't be --

MR. THOMAS:

Can I ask one more question, and I will be through.

MR. MARTIN:

Yes, sir.

MR. THOMAS:

From what all I can gather then is that you didn't have all this when we issued the permit?

MR. MARTIN:

I mean we have to get a permit first.

MR. THOMAS:

Like you said, building a house, but you don't need a permit unless you have money to build a house. You don't get a permit and say, look, I got a permit to build a house, let's build a house --

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that scenario you used. The point I am saying, Mr. Martin is, did you all ask for the permit and hope to get the permit to get financing and use the permit to get financing, or was your intent, you had financing to build the track when we issued it?

MR. MARTIN:

No, there was no commitment to finance when the permit was issued.

MR. THOMAS:

So you were going to use the permit to make --

MR. MARTIN:

First we had to get referendum license.

MR. THOMAS:

If you wouldn't have had the referendum, you would not have had the permit. That is all I want to ask. If you didn't have a permit, then you wouldn't have --

MR. MARTIN:

Mr. Ransome wants to address that question.

MR. RANSOME:

Mr. Thomas.

MR. THOMAS:

[32]

Yes.

MR. RANSOME:

Your concern is like my concern, and what really we are asking the commission and what investors had said, when the industry --

MR. TOLMAS:

Swear in Mr. Ransome, please.

AL J. RANSOME,

after having been first duly sworn, testified as follows:

MR. RANSOME:

When this industry went to the legislature and said we have to have off-track wagering because the industry cannot survive on live racing alone and operating on just a limited number of days, we have to operate year round, I think if you look at the financial statements of every racing association, theat Louisiana Downs doesn't have OTB's, but they have a right operate year round at their site, and it's the only thing keeping Louisiana Downs in business. Delta Downs has no OTB's. It has the opportunity to operate year round and produce additional income rather than let this racing plant stay idle for nine months.

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This entire industry said that that had to happen in order for this industry to survive. What we are asking is not for the Fair Grounds off-track betting parlors, not for Evangeline Downs off-track betting parlors, but the right operate year round like all other ones. OTB is not the issue. The right to operate year round; that is all we are asking. That is primary.

MS. TUCKER:

OTB is the issue if you are asking to operate year round, because you cannot simulcast at times when you are not running live racing.

MR. TOLMAS:

This is all out of order. The question you are making now is the fourth item on the agenda under Livingston Downs. What we are addressing now is the application you made sometime go that was tabled by the commission untill the ruling -- there was a judicial determination ruling by Judge Keogh while the case was pending there. This ruling

has come in, and we need to clear this motion of tabling the request off the books. The chair will entertain a motion to that effect.

MR. STALL:

Mr. Chairman.

MR. TOLMAS:

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Mr. Stall.

MR. STALL:

I make a motion in order to deny Livingston Downs the right to conduct off-track wagering.

MR. TOLMAS:

Is there a second?

MR. THOMAS:

Second.

MR. TOLMAS:

All in favor of the motion say aye.

MR. PETER SMITH:

I have a question on the motion.

MR. TOLMAS:

Yes, sir.

MR. PETER SMITH:

Is that denied or to be considered later if they are running?

MR. STALL:

Sure, if the track was up and running.

MR. PETER SMITH:

I think, if you answered me, that this just denying at the present time, and if the track was up and running following procedures of all

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other tracks.

MS. TUCKER:

Let me just clarify for the the record that I do not agree with Mr. Martin's interpretation of Judge Keogh's judgment. I don't think that Judge Keogh did not address provision 213 in the statutes. I think what Judge Keogh said

was that Livingston Downs may not have off-track betting and an off-track betting license, period. What the court said was that the denial of off-track wagering is not an off-track wagering permit to Livingston Downs by the Louisiana State Racing Commission is consistent with the Off-Track Wagering Law codified at revised statute 4:211, et seq..

MR. PETER SMITH:

That answered my question.

MR. MARTIN:

Would Ms. Tucker agree with me that Judge Keogh did not mention, address, or consider other track wagering under 149.2?

MS. TUCKER:

No, I would not.

MR. MARTIN:

Would you point out where he addressed that in his decision.

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MS. TUCKER:

That was discussed in argument, and as Judge Keogh said in his judgement, he went back and revisited everything that was argued at the hearing on the preliminary injunction, which I believe was held in the fall of 1993, and he went back and reviewed all of the statutory provisions which had to do with the arguments that were made that day, and he had said that, that is a legitimate exercise of the state policing power to deny to Livingston Downs off-track betting privileges.

MR. MARTIN:

Is it the commission's position then that Livingston Downs does not have any rights whatsoever under section 149.2?

MS. TUCKER:

149.2 does not deal with off-track wagering. It deals with simulcast wagering.

MR. MARTIN:

Other track wagering.

MS. TUCKER:

Other track wagering?

MR. MARTIN:

That's correct.

MS. TUCKER:

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There is a distinction between simulcast wagering and being an off-track wagering facility. Livingston Downs may not be an off-track wagering facility.

MR. MARTIN:

We understand the distinction. We understand the distinction. Our second request is that we have some clarification of our rights under section 149.2 which is clearly designated as "other track wagering" and was passed some three, four years before off-track wagering came into existence in the state.

MS. TUCKER:

When we get to that agenda item, we will address that.

MR. MARTIN:

Can we do that agenda item next instead of the other two, because I have filed exceptions to the other two items?

MR. TOLMAS:

Let's continue the agenda as it is. We have a motion on the floor and it been seconded.

MR. TOLMAS:

All in favor of the motion say aye.

COMMISSION MEMBERS:

Aye.

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MR. TOLMAS:

Opposed? (None) Motion is approved.

MR. TOLMAS:

We now to come to the agenda item: Commission review of Livingston Downs financial statement and conditions as per revised statute 4:141, 147 and 159.

MR. MARTIN:

Mr. Chairman, we filed two exceptions to these items. Under section 955 of the Administrative Procedure Act, Livingston Downs is entitled to notice that includes -- just like you give your jockeys and your grooms, your hot walkers who are accused of corrupt practices -- using the buzzer or something, you have to give them statutory number and statement of facts of what they did, what the accusations are. Under 955, we are entitled to that.

So our argument is that your notice of meeting doesn't set forth what you wish from us or want from us or anything that you think we have done that is not in compliance with the racing statute.

MS. TUCKER:

Mr. Chairman, I would offer in response to that an April 13 letter addressed to

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Mr. Ransome and sent by certified mail, which details the agenda item that is going to be heard at the April 29th meeting, and I would also -- I offer as Exhibit No. 1. I also offer as exception number 2, a subpoena issued to Mr. Al J. Ransome which states in pertinent part that this hearing is to be held to determine the eligibilty of Livingston Downs to reinstate its racing license as provided in the revised statute 4:147 (4) (a) through (g) revised statute 4:159 (1) through (13) and revised statute 4:160 (1) through (6) and also is a Subpoena Duces Tecum requesting specific documents. I would also offer to the commission as exception Exhibit No. 3 a suboena issued to Mr. Al J. Ransome which states in pertinent part that this hearing is being held to determine the financial condition of Livingston Downs Racing Association pursuant to revised statute 4:147 and revised statute 4:159 and 4:160 and also requests specific documents to be presented today. My argument to the commission, Mr. Chairman, is that not only was Mr. Ransome given notice by certified letter, he was given notice by two separate subpoenas, and he was also advised at the last racing commission meeting that this matter was going to be placed

on the agenda for consideration, and I ask you to deny the exception.

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MR. MARTIN:

That is one exception. Our second exception is that, under section 961 C of the Administrative Procedure Act, we are entitled to what has become known as a Bertucci hearing. Mr. Gelpi is in the audience. As you know, Mr. Gelpi represents several other agencies. If you have any questions concerning what a Bertucci hearing is, Mr. Gelpi might be willing to answer any of your questions. Bertucci hearing involves under section 961 C under the Administrative Procedure Act before you can institute an adjudicatory hearing which we are involved in at this moment, you must give Livingston Downs under the Administrative Procedure Act -- Livingston Downs must have the opportunity to informally present matters to the Racing Commission which shows we are in compliance with 160 and 147 and the statutes cited in there, an informal opportunity to present that material to the commission to show that we are in compliance with the law. Livingston Downs has no desire to hide anything or do anything in secret from this commission. I have suggested, and I suggest again that the way to address this is not to take a vote on it today. If you take a vote on it today, we have to proceed with everything after this under our objection.

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We are going -- possibly lead to more litigation. We have had enough. We don't want any more litigation with this commssion or anybody else. We do want to comply with the law.

We would like to inform the commission on our efforts to get this project off the ground, to let you know the financial condition, so forth and so on. What we suggest is that the commission form a subcommittee. We will be willing to meet with the subcommittee today and sit down and give a full report to the subcommittee on what is going

on with the project, what efforts we have made to get it off the ground, where we stand on other issues. We would welcome the opportunity to do that. I think we might be able to -- I think maybe the commissioners would then -- then that committee can report to the commission. That is not a secret meeting. That is a meeting provided for by the Administrative Procedure Act. We are doing nothing behind anybody's back. That is what we are entitled to under the law and under the case called Louisiana Board of Medical Examiners versus Dr. Bertucci. That is why they call it Bertucci hearings now. We are entitled to that, and we ask for that opportunity to meet with the subcommittee of the commission and give them -- we will be willing to give

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you more information than we are obligated to give under the statute.

At this stage of the game and at this stage of the project, we are here before a board that governs all of our competitors and our potential competitors. No one in our position relishes the idea of laying all of their business plans and proposals and negotiations out to public scrutiny to their competitors at this point. Even under the Freedom of Information Act under which this commission is subject to, there are provisions that say, this body can't release certain information supplied to it because it's commercially sensitive, trade secrets, whatever, so we are asking for that opportunity.

MR. STALL:

Mr. Chairman, may I ask a question, please.

MR. TOLMAS:

Mr. Stall.

MR. STALL:

Mr. Martin, unless I am gravely mistaken, I have been to all the meetings but one since, cause I was in California, and I don't ever remember ever having the -- with the exception of the financial situation when the then judgment agains

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Mr. Tolmas for that large sum of money, you know, I don't ever remember hearing who the financial backers were, how much money it was. We have asked over and over. I think Mr. Ransome said he is not at liberty at this time to say who they were, or he said numbers -- how much he wanted to spend, but this is an ongoing thing, most unusual, I mean. If you and I were going to try build a house or a racetrack or whatever, we would go to the bank and have the money lined up before we went into trying to buy a piece of ground, this, that and the other. Every track we have been around -- and we have seen some fail.

MR. MARTIN:

Louisiana Downs took four years, Linzey Downs never got off the ground.

MR. STALL:

Louisiana Downs did not take four years. They had money up front and Mr. DeBartelo came in and bailed out Kenneth Wilson and Wolcutt (phonetic); they never stopped. They fact of the matter, they opened their race meeting -- I guess I should not say that, but that is exactly what happened, you know, or -- we're gonna be like Earl long. You say -- yes, I lied.

Anyhow, but that happened, I was

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there, and I know, and -- I lost my train of thought. Of course, there was no OTB at that time at all, I realize that. It actually opened up in the winter, in the winter time with the glass not even all in, rather than not have racing start. But that is the kind of not here. Every track has always had their money lined up, lined up front. A guy from Eagle Downs that owned an island on the Mississippi River, he had 3800 or something in the bank, but he owned land and everything -- built a bridge to it. We told him no back then until he came up with financing, and he obviously couldn't come with it. This is a most unusual situation, and this has been going on and on and on almost meeting after meeting. I know it's

not -- I am in the business of raising money, so I know money is tight out there.

MR. MARTIN:

If you are in the business of raising money --

MR. STALL:

I raise oil and gas. I don't know a lot about building a race track. I just go to a lot of them.

MR. MARTIN:

It is not as politically charged,

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it is not as morally charged. There are institutions that based on moral and religious reasons that would not loan money to this project cause it involves gambling. Everybody understands the controversy --

MR. STALL:

I raise money for oil land gas. Two wildest things I have ever done in my life --

MR. MARTIN:

It is wild and speculative; I agree. It's difficult to raise money on oil and gas ventures, but at least you don't have deal with the moral objections.

MR. STALL:

Without arguing about that, if you have an oil spill, you have to do a lot of dealing, big dealing. Let's not talk about the oil business. We are here to talk about the racing business. I know something about what it's like to raise money and a lot of it.

MR. MARTIN:

Then you understand what happens and how difficult it is to raise money when the day after you get your -- really December 10th was a permission slip to go to Livingston Parish and ask for a referendum election. The day after we got that, we

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are in court. We are in court, and there was a stay obtained that obviated -- our point.

MR. STALL:

Let me ask this: Do you have the money lined up?

MR. MARTIN:

I would like a ruling on --

MR. STALL:

I understand.

MR. MARTIN:

I don't mean to be rude, Mr. Tolmas. I would like a ruling on some exceptions so I know what my client's rights are. I am not being rude and don't mean to be stubborn or anything, but we have important and valuable property rights involved here. I am going to ask that the commission rule on my exceptions before I answer any other questions, because if you overrule my I exceptions, then I have to object and, any proceedings that follow that, I have to do them under protest to preserve my client's rights. I am not trying to be rude, I am trying to effectively represent my client.

MR. STALL:

I want you to understand. I don't mean anything against your client. We would not have

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given race days if we didn't think you wouldn't be up and running long ago.

MR. MARTIN:

Again, I am doing my very best. There have been hard feelings of acrimony between Livingston Downs, myself and this racing commission, and I am trying my best to -- It's a new page. I am saying we do need to do business with each other, we do need to get along, but I do need to preserve my client's rights. I don't want to answer that question that you just asked me until I have a ruling on my exception.

MS. TUCKER:

May I respond to Mr. Martin's request. I never did receive a copy of the exceptions. Fortunately someone else who received a copy gave it to me yesterday afternoon; however, I think that there was plenty of time for Livingston

Downs to approach this commission in the form of a settlement rather than the morning of the meeting; and I think we ought to proceed, and I am asking you to deny the exceptions.

MR. MARTIN:

That is the kind of the thing we have been trying to avoid.

MR. TOLMAS:

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Mr. Martin, you had notice every meeting that the commission was interested in financing of Livingston Downs. You wait till the 11th hour and then come forward with exceptions for a committee. Why didn't you do this last meeting in March when the question was raised about your finances? Why didn't you raise this exception two weeks or three weeks ago when that certified letter was sent out putting this on the agenda? Why didn't you answer that from the subpoenas, raise this question when the subpoenas were sent out? You wait till this morning and bring these exceptions out before this commission. The chair calls for a vote on the exceptions.

It's my understanding that the legal opinion of our counsel recommends that we deny the exceptions; is that correct?

MS. TUCKER:

That's correct.

MR. COVINGTON:

You want a motion on that?

MR. TOLMAS:

Yes, sir.

MR. COVINGTON:

I so move.

MR. TOLMAS:

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Is there a second?

MR. STALL:

Second

MR. TOLMAS:

All in favor of the motion for denial say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

Opposed? (None) Motion is approved. Exceptions are denied.

MR. STALL:

Let me ask you, it's not germane but I see Lee sitting back there. Lee what year did you open your racetrack?

MR. BERWICK:

1973.

MR. STALL:

Just about the same time as this race track?

MR. BERWICK:

A year earlier.

MR. STALL:

Year before, didn't you?

MR. BERWICK:

[50]

Yes, I did.

MR. TOLMAS:

We will proceed.

MR. MARTIN:

At this time, I would renew my request that the racing commission appoint a committee and that Livingston Downs be allowed --

MR. TOLMAS:

That was denied, Mr. Martin, in the motion.

MR. MARTIN:

That was not part of the --

MR. TOLMAS:

You made it an informal exception, and the exceptions you presented today were denied.

MR. MARTIN:

The exception was one of insufficiency of process and one of prematurity.

MR. TOLMAS:

I thought you made this in the form of an exception?

MR. MARTIN:

No, sir. Again, Mr. Tolmas, I am no trying to be obstreperous. I am just trying to be very clear. We lawyers get like that. I apologize for

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being one. But I do request that the commission appoint a subcommittee and allow Livingston Downs to report to the subcommittee on the two agenda items. That is separate and apart from our exceptions to the hearing. So, if you would, would you please take a vote on that request.

MR. TOLMAS:

We need a motion to that effect in order to vote.

MR. MARTIN:

I would request that somebody -- the request. You can deny my request.

MR. TOLMAS:

I deny your request.

MR. MARTIN:

Thank you. For the record, any further participation by Livingston Downs or its counsel in this matter is under objection of protest. We have certain rights under the --

MR. STALL:

In globo from here on?

MR. MARTIN:

Until we get -- I asked that we take the 149.2 issue out of order and put it before this, but that request was denied, too. It depends on

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the outcome of this portion of the hearing what happens. The 149.2 request may be moot.

MS. TUCKER:

Are you asking us that we take 149.2 agenda item out of order because that is going to be the basis of your financing? In other words, if this commission would give to you what you are hoping they would with respect to simulcast, are you saying that then you can argue to this commission that you will now be able to get the financing? Is that the reason why?

MR. MARTIN:

Pardon?

MS. TUCKER:

Is this the basis? Is the simulcast issue at the Livingston Downs racetrack site the basis upon which you are depending on getting your financing?

MR. MARTIN:

Are we into the hearing on Livingston Downs eligibilty to retain its license?

MS. TUCKER:

No. No, we are not. You just asked to take that out of order, and my question to you, Mr. Martin, was whether or not you wanted to do

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that because that would then allow you to argue that you would be able to get your financing?

MR. MARTIN:

I will state right now. If that item is resolved, then it makes the financing either through a traditional lender or through an investor, exactly as I told you earlier when we were discussing the 213, 214 (D) issue, without those rights clarified, we are in total limbo. We certainly can't tell an investor anything. If we tell an investor anything about it, then you are involved in the Securities and Exchange Act of 1930, 1933, and you can commit securities fraud, without some sort of clarification as to where it is. That is when you are dealing with an investor. When you are dealing with the bank. you have to tell them pretty accurate information, too, otherwise you are committing bank fraud. All we can tell an investor or a lender at this point is we don't know.

So, with the clarification, Ms. Tucker, it will be easier. I do not intend to then, if the commission rules on that issue, say the commission ruled favorably on that issue, would I then say okay, now we have the financing. No, we are not that far along. Althought, I would be happy to sit down

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and show you letters from folks who write and say, as soon as you have any of your off-track wagering issues resolved, we are very much interested, we are very much interested in the project. It's a fact of life. I don't know if I have answered your question, Ms. Tucker.

MS. TUCKER:

Yes, you have.

MR. TOLMAS:

We want it straight here. Let's get back to the agenda. The second item on the agenda of Livingston Downs is the commission's review of Livingston Downs' financial statement and conditions per revised statute 4:141, 147 and 159.

MR. MARTIN:

Mr. Chairman, in connection with those two items and in connection with the second item --

MR. TOLMAS:

No, that is just one item.

MR. MARTIN:

I meant in connection with both of them. They are both -- they are both interrelated as I see them. I have prepared a return on the Subpoena Duces Tecum that was sent to Livingston Downs, and

[55]

again we do this under protest. We object to the --

MR. TOLMAS:

Do you have copies for all the commissioners?

MR. MARTIN:

No, I have one copy at this point. If you want to take a small recess and let all the commissioners look it over.

MS. TUCKER:

What we could do, while someone is copying that maybe, is go over the return and see exactly what you do have available to the commission.

MR. MARTIN:

Could the commission go through the return for Mr. Ransome's subpoena request? Since we are in this hearing, we also object --

MS. TUCKER:

We are going to go through our subpoena request, first.

MR. MARTIN:

I will put an objection on the record, Ms. Tucker. Livingston Downs requested that the commission issue several subpoenas and Subpoena Duces Tecum to various witnesses. Under the horse racing statutes, we are entitled to have such subpoenas

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issued under the Administrative Procedure Act. We are entitled to have such subpoenas issued. We are entitled to subpoena witnesses and put on a hearing. It's called due process of law under the Constitution of Louisiana, United States of America and the Administrative Procedure Act. The commission --

MR. TOLMAS:

Mr. Martin.

MR. MARTIN:

I will finish my presentation for the record, Mr. Tolmas. The commission flatly refused to subpoena any witness, any document, anything whatsoever to Livingston Downs request, we therefore state for the record that we are woefully unprepared to address this meeting, to put on any case whatsoever, that we have been denied fundamental due process rights to call witnesses and to put on the case by the commission. So we proceed again under protest due to the fact that we have been denied even the most basic rights to put on a case to call witnesses, so we have no such rights.

So, if you want to go through the subpoena return, we will do that.

MR. TOLMAS:

Yes, sir.

MS. TUCKER:

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I would like to respond to Mr. Martin on the record.

MR. TOLMAS:

Ms. Tucker.

MS. TUCKER:

Mr. Martin indicates that Livingston Downs' due process rights are being violated because they are not able to proceed with the presentation to this commission today. Mr. Ransome and Livingston Downs were subpoenaed to appear before this commission today, Mr. Chairman, not make a presentation, but in order to answer questions that this commission has concerning the financial viability of the Livingston Downs Racing Association. The Rules of Racing, in particular, Code Article 4, Article 153, Revised Statute 4:141, revised statute 4:160, and those are not exclusive, provide for the commission to inquire into the financial stability of any licensee. Mr. Ransome was subpoenaed to appear before this commission today, not to make presentation, but to answer questions, and I would like to note for the record, that Mr. Ransome has been given great latitude by the commission over the last 18 months, almost 18 months in appearances before this commission and presentations, lengthy presentations that he has made.

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Not only did they include the December 10th, 1992 meeting which comprised approximately two hours per the testimony and presenting of evidence by Mr. Ransome; but on January 1, 1993, Mr. Ransome appeared before the commission; on April the 15th, 1993; on May the 27th 1993, at which time Mr. Ransome made an extensive presentation to the commission concerning the reason why it was necessary for him to obtain racing dates. And at that time, part of the

reasons that were propounded to the commission why it was necessary for him to receive racing dates was that it was necessary for them to get him the proper financing. That was a lengthy presentation to the commission.

August 26, 1993, when there was a separate request for racing dates, Mr. Ransome was entitled to make a lengthy presentation to the commission. On December third of 1993, Mr. Ransome made a presentation to the commission, and as late as January 27th of this year when Mr. Ransome requested off-track betting rights, the commission granted him an extensive time to make a presentation of approximately one hour, to argue his case. I think that Mr. Ransome has more than adequately -- more than fairly been treated by this commission. I think it is time for Mr. Ransome to simply answer the questions that this

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commission has concerning the financial stability of Livingston Downs Racing Association, and I do not see that as a violation of anyone's due process rights.

MR. MARTIN:

If it leads to a motion that removes the license, Ms. Tucker, I think you are totally wrong. Our right is -- you have sent us, according to Ms. Tucker, adequate notice that the commission is proceeding with an adjudicatory hearing to suspend or revoke Livingston Downs license. That is her first position. Her second position now, is that, notwithstanding the fact that we have adequate, that you are going to take our license today, we have no right to present witnesses or to call witness in our defense. That is exactly the position taken by Ms. Tucker. You have begun an adjudicatory hearing for which we have no right to present evidence --

MR. PETER SMITH:

The witnesses you are referring to is witnesses that is on the memorandum that we received -- that each commissioner received? Track owners?

MR. MARTIN:

I am not for sure which memorandum you received, Mr. Smith.

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MR. PETER SMITH:

The request from the director who was subpoenaed here?

MR. MARTIN:

Yes, sir.

MR. PETER SMITH:

I fail to see how going into the other race tracks would involve any part of financing condition. We all have -- my understanding is that we are only asking for to be completed an incomplete financial statement that was furnished to us some time ago -- $500 and $17 million? I am sure you understand what I am referring to?

MR. MARTIN:

Yes, sir.

MR. PETER SMITH:

So that makes it incomplete. This is the only thing that Mr. Ransome had to do himself, furnish correct or approve to us -- take statement -- finance statement he furnished to us. Is that adequate or inadequate? And give us -- if it's inadequate, give us some other. That is the way I am looking at it. We are not here to hammer anyone now. This simply could change the picture of everything if this were corrected. I can't see why other racetracks have to be

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involved.

MR. MARTIN:

I understand your position, Mr. Smith, but the way due process works is we get to call witnesses. If this commission decides that the evidence we put on is irrelevant, then you can ignore evidence, but we are entitled to call witnesses and put on our case, and we have been denied fundamental right to call witnesses and put on in this case.

Now, I understand it is very clear to me what your view of this meeting is. Your legal counsel has a completely

different view of what the meeting is all about. Your legal counsel has clearly for the record stated that we are in the midst of an adjudicatory hearing for which we have had notice, the subject of which would be the revocation and suspension of Livingston Downs' license. And I understand --

MR. PETER SMITH:

So you see that two attorneys are interpreting something one way, the other one is interpreting something another way. That will happen as long as you have more than one attorney involved or opposing sides. (Laughter)

MR. MARTIN:

That is great. We have enough

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attorneys up here, but the problem I have is the commission's attorney has now told me I am in the midst of an adjudicatory hearing, so it is no longer a friendly exchange of information. Ms. Tucker has informed us we are in the middle of adjudicatory hearing and my client has had adequate notice of it. The object of it is in the notice to perhaps revoke, suspend, or withdraw Livingston Downs license.

Again, my approach was, let's do this on a friendly basis, delay this matter on the docket, form a subcommittee, and let us meet with you, and we will tell you, answer anything you want to know, but don't do it under this format, which we have been clearly informed is now a hearing to revoke our license. So that is how I have to treat it now. And Ms. Tucker is not denying me. She has been very quick to correct me other times.

MS. TUCKER:

Are we ready to proceed?

MR. TOLMAS:

Yes, let's proceed.

MS. TUCKER:

We have a return on the Subpoena Duces Tecum, Mr. Martin, and I received a letter from you with respect to this first item on the agenda.

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MR. MARTIN:

I think I need one item from my briefcase, Ms. Tucker.

MR. MARTIN:

I have the subpoena. You are talking about the eight items?

MS. TUCKER:

I think you responded with respect to item No. 1, that would be provided, a current financial statement would be provided?

MR. MARTIN:

That is in the packet.

MS. TUCKER:

That is in the packet that is being copied right now for the commissioners?

MR. MARTIN:

Yes, ma'am.

MS. TUCKER:

With respect to item No. 2.

MR. MARTIN:

Current financial statement of Al J. Ransome, we have declined to produce that.

MS. TUCKER:

Item No. 3, current financial statement of all officers and directors of Livingston

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Downs Racing Association?

MR. MARTIN:

We have declined to produce those.

MR. TOLMAS:

Will you name the current officers, directors of Livingston Downs Racing Association?

MR. MARTIN:

Al Ransome is the sole shareholder of Livingston Downs Racing Association. Al Ransome is the president and chairman of the board of Livingston Downs Racing Association. Two other members: Mr. Valene and Mr. Broadhead. Officer positions, I couldn't -- I believe Mr. Broadhead probably occupies the position of secretary of the corporation or maybe vice-president as well. But those are the only officers and directors of the Livingston Downs Racing Association. Those have remained constant since the day the first application was made.

MR. TOLMAS:

You say Mr. Ransome is a sole stockholder? Shareholder?

MR. MARTIN:

Yes, sir.

MR. THOMAS:

Would you say Mr. Broadhead was the

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vice-president, secretary and treasurer?

MR. MARTIN:

I don't know. He is one of the officers. The corporation --

MR. TOLMAS:

Maybe Mr. Ransome would like to tell us who the officer --

MR. RANSOME:

He will be general manager when the project gets off the ground. The only person with an active role in active in Livingston Downs is myself.

MR. MARTIN:

And me, but I am not an officer or director.

MR. TOLMAS:

You are getting paid for you time.

MR. COVINGTON:

Mr. Chairman.

MR. TOLMAS:

Mr. Covington.

MR. COVINGTON:

I understand that Livingston Downs is a corporation; is that correct?

MR. MARTIN:

That's correct.

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MR. COVINGTON:

Is it a Louisiana domiciled corporation?

MR. MARTIN:

It's a domestic corporation.

MS. TUCKER:

Item No. 4: A true copy of any option on any land where the proposed racing facility is to be built.

MR. MARTIN:

We have provided that in the package.

MS. TUCKER:

Item No. 5: Documentation of the current status of any title defects on the land where the proposed racing facility is to be built.

MR. MARTIN:

We have provided that in a package, and if the commission likes, again, subject to the protest and under objection, I can give the commission a detailed brief. I can give a relatively brief history of what is going on with that piece of land out there.

MR. TOLMAS:

Suppose you give us that.

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MR. MARTIN:

It's at Highway 61. No. This is embarrassing. I always forget the intersection. It's the Livingston Frost exit -- I forget the highway number -- on Interstate 12. Now, directly across highway, not interstate, but directly across from the other quadrant of the property is SECO's solid waste site. That site has been closed by the EPA and that has led to a couple of the -- one of the banks we are talking about has requested a phase one environmental survey of the property

which is underway at this point by Mr. Fairburn. It's a letter in the packet I provided. The piece of property was owned by the Heck family. Probably Mr. D'Agostino knows the Heck family. There is quite a few of them. Mrs. Heck -- one of the Hecks -- Wallace, there was a bankruptcy involved, an undivided interest by a person in bankruptcy. There is an undivided interest in the succession. In every option we get, there are about 11 signatures that have to go on them just to get an option or extension signed. The RTC, the Resolution Trust Corporation is liquidating the savings and loan mortgage on the property, and FDIC, the institution that regulates banks had mortgage on at least a portion of the property. If any of your gentleman have ever dealt with

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either of those entities, it's like moving molasses on a cold winter day. They just don't do anything. Releases had to be obtained. The title company, I believe Stewart Title, Mr. Kevin Toups had to approve any such releases. Deadlines came and went. The options came and went. The Heck family has been very cooperative. We have gotten extensions at every step of the way when there was a title problem, and there have been numerous title problems in particular approvals of the sucession and approvals of the bankruptcy court. Part of this problem is now part of the Mrs. Heck's bankruptcy problems. All approvals we had to get were obtained and they were in place. Now, First National Bank of Denham Springs, one of the entities that we are talking about on financing the actual acquisition of the 268 acres, when the EPA, DEQ, EPA and Department of Environmental Quality decided they wanted to close the SECO facility which is across the highway from our proposed site, as all banks are -- anybody who deals in -- you know how banks can get about any kind of environmental problem. They requested a phase one environmental survey.

MR. STALL:

Is there a toxic waste problem?

MR. MARTIN:

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We don't think there is one.

MR. STALL:

That is what the EPA thinks?

MR. MARTIN:

There is a hazardous waste facility that is not that far from it. You can see it; it's not in the site, but it's been closed, it's been encapsulated. There was concern there would be water seepage across the road and across into our proposed site. The phase one environmental survey is underway. We have received the -- that contingency is provided for in the options, so we believe that we are in our option period and the Hecks also agree with us. In fact, the Hecks have agreed to sign another option period that would extend it to 45 days if a phase two environmental survey is required.

So, if the phase one environmental survey comes back with a clean bill of health, no problems, then we will probably be able to go to closing very quickly on the entire 268-acre tract of land. If the phase two environmental survey is required, that will probably take another 30, 45, 60 days; then we have another extension on the option in the works and agreed to by the Hecks. I believe it's being circulated and signed among the Heck family now.

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So, that is where we stand. As you can see, it has not been an easy piece of property to buy.

MR. TOLMAS:

So, what you are saying, Mr. Martin, as of this date, you don't have a clear title that could be closed?

MR. MARTIN:

That's correct.

MR. TOLMAS:

You have a cloud on the title. So, even if you were able to have the financing and everything in place to build this track, you couldn't do it because you don't have a clear title to the property?

MR. MARTIN:

At this point we do not have the -- both the lending institution and the title company which I believe is Stewart Title have requested a phase one environmental survey, Mr. Tolmas.

MR. TOLMAS:

This is required by law?

MR. MARTIN:

It's not required by law. It's required by the title insurance company and the potential lender, the bank.

MR. TOLMAS:

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They have to get a building permit, you have to go through the environmental process? Even the federal government has stepped in on this now. I don't know if in Livingston Parish they do it, because in Orleans Parish they do it.

MR. MARTIN:

Potentially we are going to have to deal with the Wetlands Act. There may be a couple of pieces, portion of the property out there that remain underwater for a certain amount of time of the year. We don't think we have that problem. I mean, there is a drainage ditch.

MR. TOLMAS:

So really the OTB, simulcast, whatever is not holding up the financing. You have other elements involved with the land, with the title that keeps you from getting the thing done.

MR. MARTIN:

That is not correct. The title problems have -- and we have prudently not purchased the property until all these problems are resolved.

MR. TOLMAS:

I don't blame you one bit. I wouldn't take title of something that had defective title, cause then you in serious trouble.

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MR. MARTIN:

Yes, sir. And we have acted prudently as anybody would, but we are resolving the problems one by one as they come up.

MR. TOLMAS:

So in effect you are saying you still have title problems?

MR. MARTIN:

I don't know -- now you are really asking two attorneys to really start arguing whether the phase one of the environmental survey is a title problem. It is still open to litigation but it does control a title that is suggestive of litigation perhaps. It doesn't -- it doesn't affect the ownership of the property, but it does affect the willingness of a bank or anybody else to lend money on it, so it is a --

MR. TOLMAS:

Therefore, you couldn't go forward with the project of building the racetrack, or even a truck stop?

MR. MARTIN:

At this moment?

MR. TOLMAS:

Yes.

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MR. MARTIN:

We are not prepared to close at this moment because we haven't --

MR. TOLMAS:

I am talking about the title aspect of it?

MR. MARTIN:

All of the title releases, everything done. All that is left to do is the phase one environmental survey.

MS. TUCKER:

Item No. 6: The 1992 and the 1993 income tax returns for Livingston Down Racing Association and the 1992-93 returns for Al J. Ransome.

MR. MARTIN:

I belive the 1992 -- oh, yes, we do have the 19 -- what we did you will find when you look at it, that it was formed in 1992, I believe, October of 1992, but it really had substantial activity or experiences. What you will find is the 1993, you have long year income tax return in there that drops back and picks up December, November, and October, I believe of 1992, so those have been provided.

MR. TOLMAS:

Would that be on a fiscal year

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basis?

MR. MARTIN:

No, sir, on a calendar-year basis, but you can with this type of corporation file a long-year return, cause we only came into existenced October of '92, so we filed, instead of 12-month return, I believe it was 15, maybe 16 months, but that is covered in the income tax return that we furnished to you.

MR. TOLMAS:

Okay.

MS. TUCKER:

92-93 income tax returns for Al J. Ransome.

MR. MARTIN:

We have declined to produce the personal income tax returns for Mr. Ransome.

MS. TUCKER:

Item No. 7: Documentation of satisfaction of referendum expense in Livingston Parish.

MR. MARTIN:

That has been provided in the package. Also, in addition to that, I think some of the commissioners may have received the letter from the

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police jury perhaps yesterday, and I also have a copy of it here, which they have not desired, they view--again, see, I don't know what you are talking about on this item. We have given you the finance campaign report filed by Livingston

Downs which shows the expenses that they incurred and the expenses that they paid. I have heard some indication that what the commission is interested in, is there was some talk that Mr. Ransome had promised to defray the cost of the election on January 16. If that is the item that the commission is interested in, I have a letter from the police jury that says they first have not determined whether--what portion of it--cause there was another item on the election, on the ballot at that time, said they have not allocated a portion of the expenses of that election to Livingston Downs nor have they made any kind of demand or request on Livingston Downs or Al Ransome to pay it. The police jury does consider that to be--I think their letter states, more obligation of Al Ransome, Livingston Downs.

MS. TUCKER:

Item No. 8--I am sorry.

MR. MARTIN:

We haven't even looked into this yet, but it may not be legal for a citizen to pay a

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police jury expenses for an election. That is one thing, I believe their parish attorney is looking into as to whether even if we wanted to, could we legally do that. Not too many people go around just giving governments money.

MS. TUCKER:

Item No. 8: True copies of any civil judgments against Livingston Downs Racing Association. Obviously we have the judgment from Judge Keogh.

MR. MARTIN:

Again, if the commission was referring to that one, then you have it. I believe we provided that in the package. If the commission is asking whether Livingston Downs has been sued by somebody without paying its bills and somebody has gotten a judgment against them, no, ma'am, they have not. There are no other outstanding civil judgments against Livingston Downs, other than the one that

was referred to issued by Judge Keogh which we have lost at this point our declaratory judgment.

MS TUCKER:

Correct. Mr. Martin, I do have a petition for Rule to Show Cause filed by the State of Louisiana through the Board of Ethics under docket No.

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9407 in the 19th Judicial District Court concerning Livingston Downs failure to file financial disclosure statements with the Board of Elections with respect to that January 1993 referendum. Can you--

MR. MARTIN:

Yes I can. Livingston Downs, that charge was brought by the ethics commission against Livingston Downs for failure to file campaign finance report. The campaign finance report issued in that matter is included in the package and details expenses that Livingston Downs had during the campaign for referendum election. Mr. Ransome, Livingston Downs--and I was not that closely involved in anything, we had never--Mr. Ransome had never been involved with an election on that basis before. He of course supported and voted against certain political candidates over the years. He has never had an election in which he had a direct interest like that before. For two years running, the Livingston Downs story has been in the newspaper and the Denham Springs newspaper and another newspaper has been voted No. 1 news story for two years running in Livingston Parish. Mr. Ransome ran quite a few ads. They were all set forth at the bottom "Paid for by Livingston Downs, Al Ransome." Al Ransome made every shopping center in Livingston Parish

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and lobbied and politicked for his racetrack. Everybody knew that it was Al Ransome and Livingston Downs that were trying to put in the racetrack in Livingston Parish. Mr. Ransome was not aware of the election code that said you had to file campaign finance reports. A few weeks after the election, the election commission called and said, where are

your campaign finance reports. Mr. Ransome said I didn't know you had to file one. Yes, you do. Within a couple of days, we put together a campaign finance report and filed it. It was in fact filed late after the statutory deadline. The ethics commission and I had agreed on a consent on findings of fact which stated that there was no intent to deceive anybody, that everyone in Livingston Parish that voted on this knew exactly who was in favor of Livingston Downs and the horse racing proposition, although I can tell you right now, they certainly didn't know who was opposed to it, not going by the ads that ran out there. And there was a disagreement between Mr. Ransome and the ethics commission on the amount of the fine. Mr. Ransome had agreed to have pay $700 and they wanted $1400 and there you are. They don't agree on the fine, so they took it to court, and the judge will decide what fine, if any, will be imposed on Mr. Ransome.

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MS. TUCKER:

When is that scheduled for hearing, Mr. Martin?

MR. MARTIN:

I don't even know if it's scheduled. It's not scheduled.

MS. TUCKER:

It's not scheduled for May the 18th?

MR. MARTIN:

It's been continued for May the 18th. Are the copies ready yet, do you know?

MR. MARTIN:

I don't know.

MR. TOLMAS:

We are still waiting for them.

MS. TUCKER:

Do you want to take a five-minute recess?

MR. TOLMAS:

Recess for 10 minutes.

(A recess was taken.)

MR. TOLMAS:

The meeting will come to order. The chair recognizes Ms. Tucker.

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MS. TUCKER:

Mr. Martin has provided the commission with copies of the return.

MR. MARTIN:

I will be right back. I am going to ask one question.

MR. TOLMAS:

Ms. Tucker.

MS. TUCKER:

Mr. Chairman, Mr. Martin has provided the commission with copies of the current financial statement of Livingston Downs, the 1993 income tax returns for Livingston Downs, a true copy of the Curative Option to purchase the property in question, the documentation of the current status of any title, defects on the land, and that was also submitted by a presentation by Mr. Martin, the documentation of the current status of any title defects of where the proposed racing facility is supposed to be built. That was also supplemented by presentation by Mr. Martin. Documentation of satisfaction of the referendum expenses in Livingston Parish, and a copy of the civil judgment against Livingston Downs, that being the judgment rendered by Judge Keogh in the 19th Judicial District Court. Those

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are provided to each commission member for their review, and I will turn it over to any commission members who may have any questions of Mr. Martin with respect to any of these items.

MR. MARTIN:

I would like to supplement that presentation with an April 28th, 1994 letter from Mr. Joseph LeBeau representing the Heck family regarding--again, please understand, we have been--tried to be conservative and cautious as we possibly could. We think we are operating under the terms

of the original option of the purchase that was signed in October or November of 1992. In an abundance of caution, as we lawyers tend to do things, we have attempted to give written extensions to provide for every contingency that could come up, just to make sure that our rights to purchase the property are unquestioned.

As I told you earlier, we are getting yet another extension of the option to provide for the phase one environmental survey and the potential request for a phase two environmental survey, if there is any question on the phase one. So I would like to supplement that return on the Subpoena Duces Tecum with this letter.

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MS. TUCKER:

Thank you, Mr. Martin.

MR. TOLMAS:

Mr. Martin, one option, you have it renewed from December the 1st, '93 until a partial release is obtained from the FDIC of a judgment, so this is really a condition precedent in the action?

MR. MARTIN:

The releases on the mortgages have been obtained.

MR. TOLMAS:

You do have all these releases?

MR. MARTIN:

Yes, sir. As I pointed out earlier, the only thing that prevents us from closing in the next few days, as soon as all the attorneys can get together and get papers drawn up, is the phase one environmental survey. Mr. Alvin Fairburn, I believe you have the letter from Mr. Fairburn in there.

MR. TOLMAS:

Do you have a copy of those releases from the FBI?

MR. MARTIN:

I do not have them on me but I would be happy to supply these to the commission. Let

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me make a note.
MR. TOLMAS:
Would you?
MR. MARTIN:
Let me make a note. This option is a condition precedent that may never fulfill until they file releases. It remains open with no closing date possible. Mr. Tolmas, the title curative work is a file that contains about two hundred pages, so what I propose to submit to the commission is that the title company reserve the right to appove the releases, and we have a commitment letter or we can obtain a commitment letter from the title company that says they have approved the releases, so to save the commission from going through two hundred pages of title abstract work, which does involve some of the Heck's personal finances--
MR. TOLMAS:
No, I was asking for release from the FDIC. That is not two hundred pages. Ms. Ransome, would you want to testify?
MR. MARTIN:
No. What the situation is, what the RTC required of the Heck family, and this points out why we don't want to put all of this stuff in public

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record. It involves the Heck family finances that are just selling a piece of property. They had to substitute collateral to the RTC. There is a lengthy memorandum of understanding between the RTC and the Heck family as to net worth, values of property that are being substituted for collateral. So the RTC cannot just walk away from a piece of property. If any of you have dealt with the RTC, you know how they are to deal with. The Heck family is giving the RTC substitute collateral. Substitute deal. So the document, the memorandum from the RTC is lengthy and involves personal information on the Heck family that the RTC has.
MR. TOLMAS:

We don't need that information, just a point that says this judgment is released as far as this portion of ground.

MR. MARTIN:

Now, that is going to be a probably one, at most, a two-page document, but I can guarantee you, we ain't getting that until you sit down at the closing table. The RTC is holding it in its hands. We can give you a copy of it but it isn't executed--excuse me, it is. The one-page document is recorded. The collateral has been substituted.

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MR. TOLMAS:

I appreciate that.

MR. MARTIN:

What I am asking is that, I don't really want to put the Heck's financial business--

MR. TOLMAS:

We are not looking at that today at all. We are not concerned. Just the--

MR. MARTIN:

Okay.

MR. TOLMAS:

The option states the beginning date but no closing date.

MR. MARTIN:

Absolutely. We did that cause we don't know and we negotiated.

MR. TOLMAS:

But you said it's all done, a done deal as far as a requirement of the option?

MR. MARTIN:

Correct. It was simply not a matter of the RTC giving a release of the mortgage. There was a lengthy negotiation between the RTC and the Heck family regarding substitution collateral. So that has been done.

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MR. TOLMAS:

You say a release has been obtained?

MR. MARTIN:

Yes, sir.

MR. TOLMAS:

So we will have it documented in our record to show that the option is now viable and can be followed?

MR. MARTIN:

Yes, sir. If we are back in 30 days, we may have a phase one environmental survey to submit.

MR. TOLMAS:

Phase one or phase two?

MR. MARTIN:

Phase one. You do the phase one and depending how it comes out; we are optimistic.

MR. TOLMAS:

You don't even have a phase one?

MR. MARTIN:

No sir. There was litigation. It is being done--as you see the letter from Mr. Fairburn. The phase one environmental survey is being done. We are optimistic because there was prior

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litigation between the Heck family and the SECO facility. In that litigation there was determined it was determined there was no leakage, ground water seepage contaminating this parcel that we are attempting to purchase. We are very optimistic that phase one environmental survey will be a clean bill of health on the property and we will be able to go to closing.

MR. TOLMAS:

Actually you don't have a clean bill of health as far as the phase one environmental?

MR. MARTIN:

No, sir, we don't at this point.

MR. TOLMAS:

This financial statement of Livingston Downs is as of December the 31st, 1993. Do you have a more current

financial statement? This is--this is beginning of May. That is five months into 1994, so this statement is five months old.
MR. MARTIN:

I am assuming that we provided the most current one that we had. If you desire one effective, we can probably generate one as of April 30th, 1994 within the next two weeks.
MR. TOLMAS:

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This is what we were really looking for, a current financial statement.
MR. MARTIN:

I don't think you will see any significant change.
MR. TOLMAS:

Everything on this statement is true and correct?
MR. MARTIN:

I think there is a cover letter from Mr. Gene Ransome
MR. TOLMAS:

Who is Mr. Gene Ransome?
MR. MARTIN:

He is a certified public accountant and he is Mr. Ransome's brother. Mr. Gene Ransome is the controller for Unemployment Compensation Control Systems, Inc. and does financial statements for a family of companies starting with Unemployment Compensation Control Systems.
MR. TOLMAS:

He is a CPA?
MR. MARTIN:

Yes, sir.
MR. TOLMAS:

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I noticed one of the items on the balance sheet--deposits with racing commission, $10,000. That is not correct any more, is it, Mr. Martin?
MR. MARTIN:

I can't tell you for sure how much. I know Mr. Ransome has put up the required deposit for his race dates.

MR. TOLMAS:

Five thousand was forfeited by Mr. Ransome.

MR. RANSOME:

It was true on December 31st.

MR. TOLMAS:

Mr. Ransome, you want to come up and testify, sir?

MR. MARTIN:

If there is a question that I can't answer. I don't know--I am not a CPA.

MR. TOLMAS:

Mr. Ransome is here. If you can't answer it, let Mr. Ransome come up.

MR. MARTIN:

I can tell you right now, Mr. Ransome is not going to be able to tell you under

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general accounting principles how you treat that $5,000, whether it is a up on deposit or whether it's been forfeited, so Mr. Gene Ransome may be able to answer that question for you, but I guarantee you--

MR. TOLMAS:

You made the statement everything is unchanged from this statement.

MR. MARTIN:

No significant changes.

MR. TOLMAS:

$5,000 is insignificant?

MR. MARTIN:

Mr. Tolmas--

MR. TOLMAS:

Let me just ask you this. Is your client willing to testify before this commission today?

MR. MARTIN:

I don't know whether I am willing to have Mr. Ransome come up and testify.

MR. TOLMAS:

Let's make a determination. Will your client testify before this commission today? Now?

MR. MARTIN:

I request about a five-minute recess to make that determination, because I am not

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sure I am willing to have him take the stand at this point. If you and I--I apologize. $5,000 is significant.

MR. TOLMAS:

I don't want to argue about the five thousand.

MR. MARTIN:

I don't know whether he is going to change the classification of it.

MR. TOLMAS:

There may be other questions that the commissioners would like to pose to Mr. Ransome. Actually, he has been subpoenaed. If he is going to take the privilege, we would like the record to reflect that.

MR. MARTIN:

I would request about a five-minute recess to decide whether I am going to let him testify. Could I have that?

MR. TOLMAS:

Yes, sir. Recess five minutes.

(A recess was taken.)

MR. TOLMAS:

Will the commissioners please be seated?

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MR. MARTIN:

Yes, sir, Mr. Ransome will testify. But before he testifies, for the record, Mr. Ransome is testifying under protest subject to our objection to this hearing going forward. We specifically reserve our rights to section 961 of the Administrative Procedure Act, subsection C to protest and appeal any ruling made under this adjudicatory hearing because it is being conducted in violation of the law without proper notice being given and for the other reasons set forth in the exception.

MR. TOLMAS:

You have been sworn, Mr. Ransome?

MR. RANSOME:

I have. I am at your pleasure.

BY MR. TOLMAS:

Q. Mr. Ransome, we noticed the balance sheet that is submitted to the commission today is dated December the 31st, and it lists the assets and liabilities as of that date. Is that correct?

A. It is correct, sir.

Q. Do you have a more current financial available?

A. There is not a lot of activity in this account, and we just don't produce financial statement

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on a regular basis. I pretty much know what is going on. Probably 15, $20,000 difference in expenditures and it will not be a problem to produce that. This is the most recent one that--

Q. But you knew you were coming here to produce financial statement?

A. I gave you the most recent one, sir.

Q. You say everything on it is more or less?

A. As of that date, yes.

Q. How about now?

A. As of--

Q. Do you recall from memory any radical changes?

A. There will be an adjustment made on deposit of the racing commission that will change from an asset to an expense, a difference of $5,000. Probably another $10 to $15,000 in attorney fees and costs associated with what I have been--my continued efforts to develop this property.

Q. Do you have an item on this balance sheet of attorney fees?

A. Yes.

MR. PETER SMITH:

Yes, he has?

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A. Yes, one of the biggest ones. $78,179. It's not an expense, sir. You don't find that on a balance sheet. You find it in income and expense item.

Q. You said an item of $21.04 entertainment. You bought somebody a Coke?

A. Probably one of the commissioners.

Q. Which commissioner did you buy a Coke for?

MR. MARTIN:

I will instruct Mr. Ransome not to answer that one. Mr. Ransome, Mrs. Ransome and three or four other commissioners have already been drug through the coals at the ethics commission over a pot of coffee, so I think he bought me a Coke.

MR. RANSOME:

He admits to it.

MR. TOLMAS:

I have no further questions.

MR. COVINGTON:

Mr. Chairman.

MR. TOLMAS:

Mr. Payton.

BY MR. COVINGTON:

Q. Mr. Ransome, other than the materials that you have submitted with your--that were filed

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with the request for subpoena this morning, is there any other information that you can give us to show that you are in compliance with maintaining your license and, in particular, I am talking about financial material?

A. Well, I think if you look at this financial statement going right before you, is that I am making every effort humanly possible to develop this facility. Although I don't keep money in this account until it's needed. I don't think anyone can deny that I have spent in the last year--I

have put into this account $200,000. Now, if that is not good faith in pursuing this effort, I don't know what is. I know all of you gentlemen are capable of buying a Continental. Not many of you are capable of writing a check for it. But, if you wanted to buy one, you could by transferring it in from other sources that you control. That is how I am handling this company, and I am capable of continuing my effort and putting the funds that are necessary in this account while I am going forward with trying to develop this property.

Q. Mr. Ransome, we are not only concerned with your good faith effort to go forward with this, we are also concerned with your financial responsibility and being able to go forward. Now, the balance sheet

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using your figures shows about a $150,000 in the hole for Livingston Downs for--last year's income tax record for Livingston Downs shows a loss of about 140 or 150,000. We don't have your financial statement. We don't have your income tax returns, and all we have showing is those two things, $150,000 in the hole and $150,000 loss of income.

A. I don't think you will find too many startup businesses in this country that will show going in, they won, that they have to have a profit. They spend money toward the development of this, and you will find that you are in the hole for the first couple of years. It does show the capabilities, I put up $200,000 in one year. As far as my income tax return and my personal financial statement, I have delivered those to Mr. Martin. I think the state police or anybody will tell you that those certain items--once I give them to you, they become public record, and no application--river boat casino, any application requires that you breach the confidentiality of your income tax returns. And as Mr. Martin suggested, they would be happy to show them to a person who would be interested in this and could tell the commission or answer any questions that the commission may have about my financial statement or my income tax return

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maintaining confidentiality which I have a right to, according to law.

Q. We also have a right to, according to law, to delve into the finances of this matter?

A. Certainly, and I have no problem doing it without public record. Mr. Martin there will tell you that I have delivered them to him.

Q. Well, delivery to Mr. Martin doesn't do me any good cause I don't think what he has in his file--

A. I have a right to confidentiality that this will--it can't become a part of this public record.

Q. I don't think you have a right to confidentiality when you are asking to give a license and continue a license. I think you are under an obligation to furnish us with the information so we can make a reasonable decision.

A. I think I did that.

MR. COVINGTON:

I think you waived that.

MS. TUCKER:

Mr. Chairman, I have a question I wanted to ask.

MR. TOLMAS:

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Ms. Tucker.

BY MS. TUCKER:

Q. On January 10 of 1994, this year, the racing commission issued to you a letter which is a standard yearly request for financial reports that reads: Dear Mr. Ransome, please submit a copy of your audited financial reports and management letters for 1993. It states statutes. Do you recall receiving that letter?

A. Yes, I did. As I have had no operation--this is the only format that I have had. I think the format that was requested pertaining more to someone who is--the format as an ongoing racing entity, and this provides essentially the same information with the exception of operational. We have not been at that point where we do operate according to

the racing commission standards and their financial statement. This is what my CPA provided for me.

Q. That is not my understanding from our auditor, and it's expected that you provide an audited financial report and management letter for 1993, and the commission has never received a response to this letter.

A. This is the only thing I have available

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because we have not set up an accounting system that reflects operation of a racetrack because we have not yet begun operations as a racetrack.

MS TUCKER:

Thank you, Mr. Chairman.

BY MR. TOLMAS:

Q. Mr. Ransome, your largest creditor is UCCS, Incorporated. That is one of your corporations?

A. That is one I own 50 percent of.

Q. What is the status of that corporation?

A. That corporation has filed Chapter 11.

Q. Bankruptcy?

A. Right. No different from Evangeline Downs. It has specific reasons for it, but although it's not directly involved in racing. We have had--at the last meeting we had an approval of plan for reorganization which gives 100 percent payout. What was the name of the hearing?

MR. MARTIN:

I can, if I may for just a moment.

MR. TOLMAS:

We don't necessarily have to go into it.

MR. MARTIN:

I want to give a complete answer

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to your question. The status of UCCS is that it's in Chapter 11 reorganization. This month Judge Brainey in the Eastern District of Louisiana approved UCCS's disclosure statement. The disclosure statement is the first opportunity to present to the bankruptcy court the plan of reorganization. The plan of

reorganization calls for 100 percent payout of all unsecured creditors; the secured creditors; at this point I believe we have agreement from almost 100 percent of the creditors going into the confirmation hearing, so we were very confident that UCCS's plan of reorganization will be approved by the bankruptcy court. It is a 100 percent payout plan.

MR. TOLMAS:

Does that include the RTC creditors?

MR. RANSOME:

We have settled that. That was the whole purpose of going into Chapter 11 is to force settlement with RTC, and that has been done.

MR. TOLMAS:

Good for you.

MR. RANSOME:

The only way you can do--you know how the Gestapo works? And the only way we could get

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them was in a proper forum, we accomplished what we wanted to do.

MR. MARTIN:

The RTC has agreed--it's been pretty amazing. They have gone to claiming that they owned over half of the stock of UCCS to settling for an unsecured claim. The will be 100 percent paid out in the plan.

MR. TOLMAS:

Any further questions? (None) Thank you, Mr. Ransome.

MR. RANSOME:

You are most welcome, sir.

MS. TUCKER:

Mr. Chairman.

MR. TOLMAS:

Ms. Tucker.

MS. TUCKER:

That completes the agenda item two, which is the commission review of Livingston Downs' financial statement and conditions pursuant to 4:141, 147 and 159. Mr. Ransome has been given the opportunity to show compliance with the statutes, and we can move on to the third agenda item, which is the eligibility of Livingston Downs to retain

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its association license.

In conjunction with that item, Mr. Martin, a subpoena for Mr. Ransome's appearance and a Subpoena Duces Tecum was issued to Mr. Ransome for the same documents as in the previous agenda item, that being the current financial statement of Livingston Downs, the current financial statement of Al J. Ransome, the current financial statement of all officers and directors of Livingston Downs, a true copy of any options, documentation of the current status of any title defects; 1992, 1993 tax returns. Documentation of satisfaction of referendum, copies of civil judgments and --

MR. MARTIN:

We submitted our return on the subpoena for the second agenda item in response to the third agenda item along with--we supplemented it with a letter from Mr. LeBeau.

MS. TUCKER:

Correct. I am going to offer that into the record as Livingston Downs Exhibit No. 1.

MR. MARTIN:

That will be fine.

MR. STALL:

Mr. Martin, I forgot to ask

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Mr. Ransome when he was here, thinking of something else right now, but you answered, and I am sure he can answer it for himself. The financial--not your financing, the money that you need to build the racetrack, you still don't have that lined up; is that correct? Firm, I mean. Not with the

outcome of the OTB and everything else. You know what I am talking about.

MR. RANSOME:

I proposed in December oaf '92, a project that would have four different components. All four of these components were a plan that would make Livingston Downs a viable operation, because it would have something that no other racetrack has--four different profit centers. The most expensive of the profit centers was the construction of the racetrack. I admit that I did not have all of the details as to the profitability of the truck stop or the profitability of the show horse arena. The more research I got, it's incredible, and I have been called a fool so many times for even considering the racetrack. When I take the piece of property and develop it into a show horse arena and the truck stop, not depending on video poker, and make four million dollars a year on an investment of less than five

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million dollars. Okay?

I have put together a package that combines bank financing, leases on certain aspects of the truck stop. For instance, I am leasing the C store. Totally bankable deal, and as soon as the problems are finished--as soon as the environmental study is finished, then we are going to immediately close on acquiring the property and proceeding with the truck stop and the show horse arena. Now, there is something that has changed. Of course, video poker is the thing that attracts nontraditional investors. In fact, there will be a substantial cash contribution to the construction of this project by the video poker operation. Okay? When they took off the two-year moratorium and they took off the limits on video poker for the truck stop, the ball game changed. I didn't need the racetrack. I could go forward and buy this property, have two tremendously profitable centers, and the third one, the RV park that will have that, and make a significant profit on this. I have that put together. Okay?

The problem I face, a decision within my own self and the people that I am talking to as far as an investment is concerned, when it is public record that a racetrack cannot survive on live racing

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alone, it must have the ability, either under OTB or 149.2 of operating year round and generating additional income to supplement the live racing, and more so--moreover, to generate purses for horsemen. I could run this thing and break even but it wouldn't bother me. But the horsemen need something more than a thousand dollar purses, and what is driving purses in this state today is the ability to year round--when they are not running to generate purse money for their meet for the horsemen. That is the biggest concern that I have, because I know that I can't do it on 55 live racing dates.

MR. STALL:

Let me ask you this, Al.

MR. RANSOME:

I am trying to answer this. Let me give you the whole picture.

MR. TOLMAS:

Stick with the subject.

MR. RANSOME:

I think that is the subject.

MR. STALL:

Can you tell me what banks, what individuals, and how much money that you have raised to undergo for the racetrack? We don't have anything to do with it. The state police handle the truck stop. I

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just found that out this morning, and we don't have anything to do with RV or anything else.

MR. RANSOME:

I will say this, as soon as I sign any final agreement, which will be in the next week or two, because we are taking a different approach right now. We are not trying to raise the

money for the racetrack first. We are going to go ahead and get land done and then fight the battle because we will be having a thing. As soon as it is--I will tell you this, that the individuals that are putting up the majority of the money are licensed by the state police currently, and we have already said the First National Bank of Denham Springs is my prime bank that will, once I put the first four components in, will loan the balance of the money on the project.

MR. TOLMAS:

But as of this date, you don't have it?

MR. RANSOME:

I have an indication of interest from the bank that, if I do A B, C, D, they will fund loan.

MR. TOLMAS:

Back in May of 1993, last year, in

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this very hotel, you were asked a question, do you have financing? I have them standing in line, you answered.

MR. RANSOME:

Exactly.

MR. TOLMAS:

Standing in line as soon as possible--this is a quote from your testimony. I am going to build that racing surface within 30 days. I am starting on a truck stop to protect the land. Now, at page 160, Mobil is putting all the money up for that, i.e., the truck stop.

MR. RANSOME:

At that point in time, we exercised the option, and have not been able to close because of title problems.

MR. TOLMAS:

Here at another meeting, the May meeting, you answered on page 121: In 60 to 90 days I will be coming to you with the people who are going to participate in a track with me and that is a year ago.

MR. RANSOME:

That was said in good faith.

MR. TOLMAS:

The 60 days came and the 90 days came and went.

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MR. MARTIN:

At that point, you may recall that we had repeatedly requested certain items to be placed on the agenda, such as the right to either own and operate off-track betting parlors. We modified our application to limit that to the off-site betting parlor provided in 214 D. The racing commission simply wouldn't put those items on the agenda. When they finally put it on the agenda, we filed--and we couldn't get it on the agenda, we filed out in East Baton Rouge Parish for the Declaratory Judgment. You then put it on the agenda and deferred to Judge Keogh. We have been actively pursuing this. Everything that Mr. Ransome has told this commission has been told to them in good faith. When you deal with people and then they ask you the question, a month later, well, have you gotten anything from the racing commission? No, we haven't. They won't put us on the agenda. Well, they can't deal with you any more. They cannot deal with you.

We have gone through a process of trying to clarify our rights, and if the racing commission does what it apparently is headed for, it's doing day, then you will certainly have gone a long way toward clarifying our rights. We are not perhaps--I

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don't think we are going to enjoy the clarification that we have given the racing commission, but you will clarify rights. Each and every one of you folks are business people. You know good and well that you can't do business when you don't know the rules, when you don't know what you can do. Nobody can do business that way and nobody will do business for someone when you can't give them any kind of statement, yes, we do have this, no we don't have that.

MR. THOMAS:

Have you gotten a license for a racetrack?

MR. MARTIN:

Yes, sir, we do have a license for a racetrack.

MR. THOMAS:

That is what you all asked for and that is what we gave you.

MR. MARTIN:

We always said we forced that process.

MR. THOMAS:

Wait a minute. The point I am saying is that you all wanted a license. We gave you a license, but you keep coming back adding more and more

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to it, cause you can't do this without this, can't do that. That was not the first--what you all asked us for was license. Maybe you all had four steps or six steps in mind, but we agreed to the one you asked, and you received it.

MR. MARTIN:

Mr. Tolmas has been quoting from Mr. Ransome's testimony. I would ask him to go back to the December 10th from Mr. Ransome which explicitly outlined four steps.

MR. THOMAS:

Wait a minute. The point I am saying--we have nothing to do--the license is what we have jurisdiction over. We have granted that.

MR. MARTIN:

It's all in the license process is what we set forth.

MR. THOMAS:

All I am saying is--

MR. MARTIN:

If we had lost the referendum, you would never have seen us again. We won the referendum electon.

MR. THOMAS:

We had nothing to do with that.

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MR. MARTIN:

We came back for the license and racing dates.

MR. THOMAS:

Did you get that?

MR. MARTIN:

Yes. Then we said we could come back for dates.

MR. THOMAS:

Before you got license and you got dates, that was not your approach. You wanted the license. You were given the license, then you had to have racing dates immediately to start contstruction -- no OTB, no nothing. We gave you racing dates; is that right?

MR. MARTIN:

You did.

MR. TOLMAS:

Okay, sir. The point I am getting at, from that point there, we should have seen the racetrack being built. I mean, we don't have -- I don't have nothing to do -- I can't make somebody give you all the finance. We gave you the tools, all that we can give you at that time to require that or to obtain that. What you should have had before we gave

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them to you, but we did give them to you in good faith because Mr. Ransome had these proposals, and we took his testimony in good faith and issued him the license and the racing dates.

MR. MARTIN:

Yes, sir.

MR. THOMAS:

So, I don't know what else -- you are saying there is hard feelings between the commission and Mr. Ransome. I would love to see a track as well as anybody in that area. We want a racetrack. We don't want to have to back into it. We want the horsemen to be able to start running horses, not they to wait three years to back into a situation. That is my -- if you think we are fighting you about it or whatever, but it is my personal opinion, that what we have done and we expect you all to do what you said you were going to do.

MR. MARTIN:

Are there any further questions on agenda items No. 2 and 3?

MS. TUCKER:

We are on agenda item No. 3.

MR. MARTIN:

Mr. Covington.

MR. COVINGTON:

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I don't have any questions. Mr. Chairman.

MR. TOLMAS:

Mr. Covington.

MR. COVINGTON:

Is the floor open for a motion.

MR. MARTIN:

Before a motion is made or vote taken, Mr. Ransome has a brief closing statement to make regarding agenda item No. 3.

MR. RANSOME:

I appreciate what you just said, Mr. Thomas, that we all want the race track built. I am appalled as to the urgency of this hearing. In August, if I were to come back before this commission and request an additional set of racing dates, and I do not have the financing or anything, I would not ask for racing dates, nor this commission would not be required to -- in fact, you have an obligation not to give them to me. Right now we have in this state a void of so many racing dates. Nobody is interested in filling these racing dates. I am making every effort and expending a pretty considerable amount of money and time filling these racing dates. Who in this world is

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being harmed by Al Ransome continuing until August 15th to try to provide live racing for the horemen of this state? Who is being harmed? But, if you feel that I am not making the effort, and if you revoke this license today, then I cannot go to anyone and say, I have a license to build a racetrack, let's proceed with the financing. I will have that taken away, so any effort between now and August the 15th is futile because I do not have a license. On the other hand --

MR. TOLMAS:

Mr. Ransome, may I answer that to your satisfaction?

MR. RANSOME:

Yes, sir.

MR. TOLMAS:

I will go on record now that I will commit myself that, if you get financing and are in a position to carry out all the rules of this statute in obtaining license, I will go to bat for you and see that you get your license. This should be revoked today. In the meantime you put a black mark that racing commission doesn't want you to build a racetrack. I want to go on record, I want you to --

MR. RANSOME:

You are on the record.

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MR. TOLMAS:

I voted twice to give you a license, not once, twice. So did every member of this commission vote twice to give you a license, despite the fact that Civil Court in New Orleans declared the license vacate.

MR. RANSOME:

Show me one person who has been harmed by Al Ransome continue to fill dates that no one wants. Thank you for you attention, sir.

MR. TOLMAS:

The chair will entertain a motion.

MR. COVINGTON:

Mr. Chairman, in accordance with article 160, I cannot find any responsible financial information to indicate to me there is a continuing ability to meet a financial obligation in connection with the operations of a racetrack by Livingston Downs, so I make the motion that we revoke all licenses and permits granted to Livingston Downs as an association and that all license and permits to conduct race days be terminated and all racing privileges as well.

MR. TOLMAS:

Is there a second?

MR. STALL:

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Second.

MR. TOLMAS:

Second by Mr. Stall.

MR. MARTIN:

I want a poll on the commissioners.

MR. TOLMAS:

All in favor of the motion say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

Opposed?

MR. VINET:

Abstain.

MR. MARTIN:

I want a poll of the commissioners, please.

MR. TOLMAS:

Mr. Burgess, poll the commissioners.

BY MR. BURGESS:

Q. W. C. Littleton?
A. For.
Q. Mr. Stall?
A. For.
Q. Mr. Covington?

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A. For.
Q. Mr. D'Agostino?
A. For.
Q. Ms. Granger?
A. For.
Q. Peter Smith?
A. For.
Q. James Thomas?
A. For.
Q. Dale Vinet?
A. Abstained.
Q. Oscar Tolmas?

A. For.

MR. BURGESS:

Mr. Chairman, the motion carries eight-four, no one against, with one abstention.

MR. MARTIN:

Thank you, Mr. Chairman.

MR. THOMAS:

I don't know if what you stated about, if they get the necessary financial commitments and the necessary records, can we put that in the form of a motion that we will hear him and -- I guess what I am trying to get at, if he gets everything together, whether he gets it together next month or the next

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month, that we will immediately rule on it? I would say commit for, if he can get all this information.

MR. TOLMAS:

Mr. Thomas, make the motion.

MR. THOMAS:

Well, I don't know. I guess what I am trying to say is maybe Ms. Tucker can put it in a legal fashion. What I am trying to say is that --

MR. MARTIN:

If Livingston Downs returns to the racing commission with acceptable financial commitments for the financing construction of its project, then the racng commission would vote favorably on an application? I don't mean to be putting words in your mouth, but that is what I would like to hear.

MR. THOMAS:

I think if you fulfill all of the necessary requirements.

MS. TUCKER:

I think the problem maybe with voting on that right now is that we really need to review -- we need to go back and start from square one and we need to review exactly what kind of financial situation -- cause we don't even know what the necessary -- definition of necessary financial

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requirements is at this time. We need to probably -- we need to see what kind of submission Livingston Downs can make with respect to their financial responsibility to this industry. I think the sympathy is there for --

MR. TOLMAS:

As a practical matter, Mr. Ransome, Joe Blow or Jim Smith, anybody are welcome to come before this commission and apply for a license if they have the proper requirements as required by the statutes. If Mr. Ransome wants, he can get those. We gave it to him before, we are more than willing to give it to him again. I don't think we can vote today that it's acceptable for something we haven't seen. He is welcome by law to come before us.

MR. MARTIN:

Mr. Thomas was requesting that.

MR. THOMAS:

I withdraw my motion then. It's in good faith.

MR. TOLMAS:

Let it be understood, there is no doors closed to Mr. Ransome or anyone to apply for a license to run a racetrack before this commission. We welcome as many as possible, because it's good for the industry, and that is what we are here for is to make

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sure that the industry prospers as well as it can to goin through all kinds of hardships now.

MR. PETER SMITH:

Mr. Chairman.

MR. TOLMAS:

Mr. Smith.

MR. PETER SMITH:

My concern would be, if Mr. Ransome comes back in a month or so, say two months, certainly I agree that we would hear. I am wondering, since this man has spent some money in getting a referendum, would we give any preference between -- I think there should be a certain amount of time set here today to hear him before we would

consider any other license for any other party in Livingston Parish, if I am making myself clear?
MR. MARTIN:

In other words, Livingston Downs has gone through the time and trouble and a couple of hundred thousand dollars worth to get a referendum passed in Livingston Parish, now any of these gentlemen who operated in 86-87 can move into Livingston Parish and open our racetrack.
MR. PETER SMITH:

If you meet the requirements of

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your racetrack.
MR. MARTIN:

The one Livingston Downs fought for, the one that Livingston Downs campaign for, the one that Livingston Downs spent the money for and got the approval of 54 percent in a larger turnout than the last presidential election in Livingston Parish. Mr. Smith, I understand what you are saying, and I truly do appreciate your sympathy and your desires to see what something right, yes, sir, I do. I do.
MR. PETER SMITH:

If you can come up with the answers to the questions, then --
MR. MARTIN:

Absolutely. I more than appreciate it, and I can guarantee that Mr. Ransome appreciates your concern that the commission would not accept another application, somebody to open a racetrack.
MR. PETER SMITH:

We have a time limit on it. We couldn't say indefinitely because then people in Livingston Parish and the people out there would be suffering.
MR. MARTIN:

Yes, sir, I agree. I agree but the fact

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remains that Mr. Al Ransome scouted out what happens to be a rather unique location for a racetrack, and it's sitting out

there, and the action of this committee today has opened it up to fair game for anyone that wants to pick up.

MS. TUCKER:

Mr. Martin, may I say something just on behalf of the commission.

MR. MARTIN:

Sure can.

MS. TUCKER:

I think it's abundantly apparent that the horsemen want to have more racing days, but also abundantly apparent that this industry is in a serious state of distress right now. Obviously, based upon the difficulty that Mr. Ransome has getting qualified financiers to finance the project, that is true. It's also true that, there was, has been well over 15 months worth of discussion between you and me and Mr. Ransome concerning the off-track betting situation, that it was my advise at the very outset of this, and I came to your office and met with you, and told you that I thought that that was going to be a problem, and that I thought it would behoove Livingston Downs to get a Declaratory Judgment before they started

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on any of this action. So, against my advise, you all proceeded, and now courts -- you have spent the money, and the courts have ruled against you. I realize that it's a distressing situation that you are in, but it is certainly not one that was not foreseen.

MR. MARTIN:

And it's extremely distressing for the horsemen of this state, because what Livingston Downs can't do, no other Racing Association can do. I hope everybody on this commission realizes that the situation as it stands right now is that there will never be another new racetrack in the State of Louisiana, because as it stands right now, every racing association that went to the legislature in 1986 says that we can't survive without additional revenue from off-track wagering to build our purses to get folks coming into this

state. As it stands right now, there will never be. You and I had this discussion. If they all shut down tomorrow for one day, you could not open another one. You do not open.
MS. TUCKER:

And that was the exact intent of the law. That is the job of the legislature, to define and suppress gambling. What Judge Keogh said was that this particular offtrack betting statute is in

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compliance with the latest expression by the Louisiana Supreme Court, which allows for limitations on gambling, and this is a limitation, and we had discussed this before, and this is a limitation, and we had discussed this before, and I had advised you at that time that I thought proper -- excuse me. Let me finish. The proper avenue was for you to go to the legislature and change that because, since 1985 or '86 when the OTB statute was passed, circumstances in the State changed, and you chose not to do that.
MR. MARTIN:

We did do that and met with no success.
MS. TUCKER:

You chose not to do that first.
MR. MARTIN:

What I am telling the racing commission is that you -- everybody on the commission knows what your charge is regarding the horse racing industry to promote and maximize participation in the horse racing and the breeding is not just racetracks. It's the horsemen that own land, that stable horses, that race them and buy them and sell them, all industry.
MR. TOLMAS:

We could deal with this all day

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long, Mr. Martin. Livingston Downs is not the whole agenda for this meeting.
MR. MARTIN:

One minute, please, Mr. Tolmas. We would request that the racing commission offer, give us some assistance with the legislature to go and get this changed, because the HBPA has considered discussions. Do we want to open a racetrack? If they open a racetrack, they have the same problem, they can't do it. So, all I am saying is, as the law stands right now, according to Ms. Tucker and according to the courts, and we are still trying to get that changed, is there is no more new racing in the State of Louisiana. That was not the intent of the horse racing law. It says, to promote and maximize this industry.

We are in a situation now, not just Livingston Downs. This commission is in a situation where it's hamstrung and you can't develop this industry. The industry is static as it is now, and it's just not static. Static indicates it's not shrinking. It's obvious now with Jefferson Downs closure, with Evangeline Downs in bankruptcy, that you have a shrinking industry. You have new blood coming in. You have what appears to be at this point an absolute prohibition to anybody trying to do it. I

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think that is a regrettable situation, and I think everybody -- man and woman on this commission should employ the legislature to do something about that.

MR. TOLMAS:

We are not permitted to do that, Mr. Martin. We signed a pledge not to lobby the legislature under penalty of the law.

MR. MARTIN:

Okay. Then it's a shame.

MR. TOLMAS:

Okay. Let's move on now.

MS. TUCKER:

Mr. Chairman, may I prefect the record.

MR. MARTIN:

As a former licensee with the racing commission and with a stake in this matter, we request a ruling on the fourth agenda item.

MS. TUCKER:

If you will let me finish, I will get to that. With respect to the last agenda item, the third agenda item under Livingston Downs, I would like to offer into the record as Livingston Downs in globo the return on the Subpoena Duces Tecum that was issued and that Mr. Martin provided, and also as the following

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items: Livingston Downs revocation numbers one through eight which are the December 10th, 1992 transcript of the Louisiana State Racing Commission meeting; the January 21st transcript; the April 15th 1993 transcript. The May 27th, 1993 transcript; the August 26th, 1993 transcript; the December 3rd, 1993 transcript; and the January 27th, 1993 transcript. The March 29th, 1993 transcript, and in addition as Livingston Downs revocation No. 9, the January 10th, 1994 letter to Mr. Ransome requesting a copy of his audited financial and management letters for 1993.

That completes that agenda item.

MR. MARTIN:

Was there a ruling on the agenda item?

MS. TUCKER:

It was accepted in the record.

MR. TOLMAS:

Let it be accepted in the record.

MR. MARTIN:

The ruling is?

MS. TUCKER:

That items that I just put into the record have just been placed into the record.

MR. MARTIN:

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Okay. Can we have a clarification on whether, if Livingston Downs is licensed, they have those rights?

MS. TUCKER:

What rights?

MR. MARTIN:

I will request a ruling on the agenda item, Ms. Tucker.

MS. TUCKER:

And I would suggest, Mr. Martin, if you would like an attorney general's opinion, that you get in touch with Mr. Tolmas who is the chairman of the racing commission and ask him to make a formal written request of the Attorney General's Office for an opinion as to whether or not a new racing facility built subsequent to the passage of the off-track betting act may operate at its facility simulcast year round. That is, as I understand it, the question?

MR. MARTIN:

In other words, you will not rule, the racing commission will not rule on our fourth agenda item?

MS. TUCKER:

No.

MR. TOLMAS:

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Don't you think it's premature, Mr. Martin?

MR. MARTIN:

No, sir. As a matter courtesy, I would like to inform the racing commission that, under section 158: Upon revocation, suspension, withdrawal of a racing license or racing privileges of an association, that the association is entitled to go to the parish court over which it has jurisdiction of it, which is Livingston Parish; and at 11:47 this morning, a Petition for Review and Trial Novo of this matter was filed and a suspensive appeal was granted enforcing, keeping in force Livingston Downs' license. As you can tell, we fully expected the vote that happened today.

MR. TOLMAS:

Oh , you filed this before the vote?

MR. MARTIN:

No, we filed it immediately after the vote.

MS. TUCKER:

Do you have a copy of the Petition for Judicial Review?

MR. MARTIN:

I will -- I don't mean to be ugly, but you misapplied orders to the commission before and

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you flatly ignored court orders, so I will supply it for you, and I will get it for you. If you want it, I will have it faxed up with the judge's signature on it. Livingston Downs license is in effect, as we speak, and will remain in effect until further order of the court in Livingston Parish.

MR. RANSOME:

May I thank the commissioners for listening to me, and I want to state publicly to the horsemen, that although I am called a fool for even doing it, I will not give up, I will continue to do everything within my power to provide live racing days to thoroughbred and quarter horsemen in this state.

MR. TOLMAS:

Thank you, Mr. Ransome.

We have three rules. Tino, would you address the commission. Come by the mike and inform the commission of what these rules -- refresh their mind what stage the rules have been in.

MR. RIEGER:

These three rules are in -- they are ready to be formally adopted. They have gone through the procedures. They have been posted in the Louisiana Registrar, and they are now awaiting approval from the commission. The three rules are: The two-

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year-olds medication rule 1503 which has been repealed in its entirety. That was a rule that said two-year-olds could not have bute. Rule 1722 was also repealed in its entirety, and paving the way for two-year-olds to be allowed to run on bute. We have now been under

emergency rule and it went through the proper channels. It's cleared the Louisiana Registrar. It's now ready for a vote. Also, the equipment rule 9503 which is a safety rule. All jockeys from this point on will be required by rules to wear their safety vests.

MR. VINET:

I so move, Mr. Chairman.

MR. PETER SMITH:

I second.

MR. TOLMAS:

Any discussion? Mr. Gelpi, do you want to address these rules?

MR. GELPI:

I wanted to get a copy of them first, and I may ask a question.

MR. TOLMAS:

All right, sir.

MR. GELPI:

Just for clarity, the rule related

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to the two-year-olds is that your making a permanent rule of the emergency rule? This is -- let me stop there. The rule related to the two-year-olds, the action you are taking today is to make permanent your emergency rule?

MR. TOLMAS:

All three of them are the same.

MR. GELPI:

All right.

MR. RIEGER:

They have gone through the proper channels and now they are ready for --

MR. TOLMAS:

The chair will entertain a motion.

MS. GRANGER:

It's made.

MR. VINET:

I moved.

MR. PETER SMITH:

Second.

MR TOLMAS.

All in favor say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

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Opposed? (None) Motion is adopted.

MS. TUCKER:

The Richard King matter. Mr. Gelpi represents Mr. King, and it has been continued. Shelton Zenon.

MR. TOLMAS:

Mr. Gelpi, are you the attorney in this case?

MR. GELPI:

No, sir, I am not. I understand I am shown as attorney in this case, but I have not been asked to represent this licensee.

MR. TOLMAS:

Ms. Tucker.

SHELTON ZENON:

after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. TUCKER:

Q. Mr. Zenon, you are appearing before the commission today after having a positive drug test in one of your horses; is that correct?

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A. Yes, ma'am.

Q. You are unrepresented by counsel? You don't have a lawyer?

A. No, ma'am.

Q. Do you want a lawyer with your hearing today?

A. (The witness shakes negatively.)

Q. You don't have a lawyer?

A. No.

Q. You can stand at the podium or you can sit.

A. Better I sit. I have a bad knee.

MS. TUCKER:

Mr. Zenon appears before the commission today. His horse American Woman, who was the winner of the sixth race at Delta Downs on March the 12th of 1994, tested positive for Hydromorphone and the metabolite Dihydromorphine. He had a hearing before the stewards on March the 26th, was suspended six months and referred. The State calls Judy Dugas.

Mr. Zenon, I am calling Ms. Dugas because she is the state steward at Delta Downs.

Q. I am sure you know her, correct?

A. Yes, ma'am.

Q. You had a hearing with Ms. Dugas?

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A. Yes, ma'am

Q. Are you disputing before the commission any of the findings of Ms. Dugas?

A. I understand.

Q. In other words, do you disagree with the finding that Ms. --

A. Yes, I disagree.

JUDY L. DUGAS

after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. TUCKER:

Q. Ms. Dugas, did you have occasion to have a stewards hearing where Mr. Shelton Zenon?

A. Yes, we did.

Q. What was the substance of that hearing?

A. Mr. Zenon denied giving any medication to his horse. He did not request a split sample. He had no idea how the substance came to be in his horse, and he did not request a suspensive appeal.

Q. Is he currently on or off-track?
A. He is off-track.
Q. And in conjunction with the hearing, did
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you issue a ruling?
A. Yes, we did.
Q. Was that ruling No. 4066 from Delta Downs?
A. Yes, it was.

MS. TUCKER:

Mr. Chairman, I offer into the record ruling No. 4066 as Zenon 1, and also as Zenon 2, special report by Ms. Judy Dugas, state steward for Delta Downs.

Q. Mr. Zenon, do you have any questions of Ms. Dugas?
A. No, ma'am.
Q. Do you want ask her any questions?
A. No, ma'am.

MR. VINET:

Mr. Chairman, I had a conversation with Mr. Zenon before the meeting, and he swears up and down that he doesn't even know what this is, and I know we hold him responsible for it. But it's his first offense that he has ever had, and I would like that we go a little bit lenient on him, give him a chance, give him the benefit of the doubt.

MR. TOLMAS:

That is category one drug. The
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recommended penalty guidelines as followed by the RCI in most states throughout the country, most commissions throughout the country --

MR. VINET:

Mr. Chairman, if we go according to what they are saying on here --

MR. TOLMAS:

We adopted that, Mr. Vinet.

MR. VINET:

I know.

MR. TOLMAS:

This commission went on record saying we would unify our penalty guidelines with the RCI.

MR VINET:

And that is what? I mean, if you put a $5,000 fine on this man here, you are putting him out of business.

MR. TOLMAS:

It's a one-year suspension, not more than five years.

MR. VINET:

I would like to make a motion that we suspend him for six months and give him a five hundred dollar fine.

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MR. LITTLETON:

I will second that.

MR. TOLMAS:

All in favor say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

Opposed? (None)

MR. TOLMAS:

The motion is adopted.

MR. VINET:

You understand, Mr. Zenon, what we did for you right here? This violation calls for a one-year suspension or a $5,000 fine. That is what this violation calls for. We gave you six months suspension and a five hundred dollar fine cause I know you can't afford it. I am almost sure can't afford no $5,000?

MR. ZENON:

No, sir, I can't.

MR. VINET:

So we are giving you a chance, don't come back, you know.

MR. ZENON:

Yes, sir, I understand what you are

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saying.
MR. THOMAS:

Also, it's imperative that you understand the rules, that no shots -- that you can't give no shots and your horse has to be attended by you from the time you take him up there. The horse can't be left alone. Until you understand those --
MR. VINET:

You better stay with your horse when you get back on track -- you have been off track now. This is six months from the time you got off track. So you got a month and something served already. So, this is from the time you got off track till your six months are up. When you get back on track, make sure you stay with your horse, that nobody can get to your horse.
MR. ZENON:

I understand what you are saying. When do I need to pay this?
MR. VINET:

Any time during this six months. You can pay it on time if you want to, but as long as you have it paid for by the time your six months are up.
MR. ZENON:

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Who do I mail the money to or what?
MR. VINET:

To Judy Dugas or Louisisana State Racing Commission. You give it to Ms. Dugas.
MR. ZENON:

Okay.
MR. TOLMAS:

But you are not to be permitted on any racetrack or off-track betting parlor.
MR. ZENON:

I know that. I don't go to the tracks at all right now.
MR. PETER SMITH:

Do you understand instructions and the guidance the commission has given to you?

MR. ZENON:

Yes, sir.

MR. PETER SMITH:

You do you understand that no matter, if you don't know what happened to your horse, you are totally responsible for that horse?

MR. ZENON:

Yes, sir.

MR. PETER SMITH:

And I guess Judy Dugas can instruct

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you how to pay your fine.

MR. VINET:

I want you to know, this commission kind of feels for you all, and we are giving you a chance. We are not being very hard. This is very, very light. This going out on a limb trying to help you out, so don't let us down, please.

MR. BURGESS:

For the record, is the commission upholding the stewards' ruling?

MR. VINET:

Right. That is six months?

MS. DUGAS:

Six months effective 3-6-94.

MR. TOLMAS:

How much was the fine?

MS. DUGAS:

Five hundred.

MR. TOLMAS:

Okay, sir.

MS. TUCKER:

Joseph Calais. Mr. Chairman, I don't believe Mr. Calais is here. To refresh the commission's memory, Mr. Calais appeared before the commission in the end of January. It was a fourth drug

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offense, but because the first two drug offenses had not been -- there had not been a stewards' ruling issued on his first two drug offenses, the commission cut him slack and put him on probationary period. The first drug test that he took, meaning he came up positive for cocaine, I believe Mr. Calais was notified to be here. He received proper notification, and Ms. Dugas also spoke with Mr. Calais and told Mr. Calais to appear before the commission today and it would be in his best interest to do so. Ms. Dugas, am I stating that correctly, you spoke with Mr. Calais?

MS. DUGAS:

In stewards' hearing, he was informed that he would be on the agenda for this meeting.

MS. TUCKER:

Subsequent to the stewards' hearing, did you have any kind of conversation with him?

MS. DUGAS:

Yes. I told him that it would be in his best interest to appear before the racing commission, that he -- he hated to come before the racing commission and face them again because he was on -- it was only six months since the commission gave

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him a very life light penalty for his fourth offense and he hated to face the commission again.

MS. TUCKER:

Mr. Chairman, in light of the fact that Mr. Calais has been given notice by certified mail and also had conversation with the state steward, Ms. Judy Dugas, concerning his appearance here today, I would recommend that the commission go forward with hearing this matter.

MR. GREGOIRE:

I spoke to his employer, Louisiana Stallions, and she is attempting to get him in-house as of Wednesday I spoke to her. They are trying to get him in-house drug.

MR. TOLMAS:

He will have to come back before us.

MS. TUCKER:

In connection with Mr. Calais' case, I would offer as Calais Exhibit No. 1 in globo the entire racing commission records provided to the commissioners here today.

MR. TOLMAS:

Mr. Littleton.

MR. LITTLETON:

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I move we give him 15 years and uphold the stewards.

MS. GRANGER:

Second.

MR. TOLMAS:

All in favor of the motion say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

Opposed? (None) Motion is adopted.

MS. TUCKER:

Donald Watson.

DONALD WATSON,

after having been first duly sworn, was examined and testified as follows:

EXAMINATION

MS. TUCKER:

Mr. Chairman, Mr. Watson appears before the commission today for reinstatement. He was given a six-month suspension from October 23rd -- October the 23rd of 1993, excuse me, through April the 23rd of the 1994 drug abuse, for drug offense. He was

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required at the last commission meeting where he appeared to appear before the commission after the six months probationary period to explain to the commission what efforts he has towards his drug rehab, and that is why he is

appearing today to make that presentation to the commission and seek reinstatement.

Q. Is that correct, Mr. Watson?

A. Yes, ma'am.

Q. Have you been able to get yourself in a drug rehabilitation program?

A. Yes, ma'am.

Q. Where was that?

A. Brisco in Lake Charles.

Q. Was that an in-house rehabilitation program?

A. 28-day program in house.

Q. When did you go into the program?

A. December the 8th.

Q. And you got out I guess then sometime in January?

A. No, I went in on the third of March -- when was it? January.

BY MR. TOLMAS:

Q. Mr. Watson, when did you say you went in?

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A. I have it on paper. They had sent a copy of the --

Q. Yes, we have a copy here. It says you were admitted on March the 8th.

A. Right, then on April the 5th --

Q. You got out?

A. I got out, right.

MS. TUCKER:

Are you currently in any kind of 12-step program?

A. Yes, sir. I go to AA meetings and seek counseling at Brisco's

Q. How often do you go to AA meetings?

MS. DUGAS:

He also attends meetings at the track.

MR. VINET:

Mr. Gregoire, do you have something on him?

MR. TOLMAS:

Yes, he has a report on him.

BY MS. GRANGER:

Q. Where are you going?

A. South city group on LaSalle Street, Lake Charles.

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Q. How often?

A. I make three meetings a week.

BY MR. LITTLETON:

Q. Are you the one that worked for Lee Berwick?

A. Yes, sir.

MR. GREGOIRE:

I spoke to Dan Blake, a counselor who holds the meetings at Delta Downs. He said he is doing very well, has a very good attitude and he does make the meetings in Vinton.

MS. TUCKER:

He has served his six-month suspension.

MR. COVINGTON:

Mr. Chairman.

MR. TOLMAS:

Mr. Payton.

MR. COVINGTON:

Is the floor open for a motion on this?

MR. TOLMAS:

Yes, it is.

MR. COVINGTON:

I make a motion that he be

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reinstated and that this is subject to his attendance of after care at the track on Wednesdays for one year and continue with his drug screen test as outlined in this letter of April the 15th, 1994 by Dan Blake.

MR. VINET:

I second it.

MR. TOLMAS:

All in favor of the motion say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

Opposed? (None) Motion is adopted. You understand?

MR. WATSON:

Yes, sir.

MR. TOLMAS:

You are reinstated. You can get your license, but you have to stay with Mr. Blake, follow his instructions.

MR. WATSON:

I will.

MR. TOLMAS:

Don't get in any trouble in the meantime.

MR. WATSON:

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Thank you.

MS. TUCKER:

That is all I have, Mr. Chairman.

MR. VINET:

I move that we adjourn.

MR. PETER SMITH:

Second.

MR. TOLMAS:

Before we adjourn, the chair, and I am sure the commission would like to thank Lieutenant Robinson for serving so well on behalf of the commission. He has been with us the whole period of time with this new commission and has done an excellent job and we sure hate to see him being transferred. We surely hope that it's a step forward for you and maybe come back and see us and things are improved down here where we are.

LT. ROBINSON:

Very good.

MR. TOLMAS:

Good luck to you and we wish you well. (Applause)

We will now vote on a motion to adjourn. All in favor of the motion say aye.

COMMISSION MEMBERS:

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Aye.

MR. TOLMAS:

Opposed? (None) Meeting is adjourned.

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CERTIFICATE

I, SYLVIA C. PASTRANO, a certified Court Reporter for the State of Louisiana, do hereby certify that the foregoing transcript is true and correct, as reported by me and reduced to Typewriting under my personal supervision.

/s/ Sylvia C. Pastrano

SYLVIA C. PASTRANO

In
CIVIL DISTRICT COURT FOR
THE PARISH OF ORLEANS

STATE OF LOUISIANA

NOS. 92-20961 c/w 95-15331 SECTION 11 DIVISION "G"

LIVINGSTON DOWNS RACING ASSOCIATION, INC.

versus

LOUISIANA STATE RACING COMMISSION

* * * * * * * * * * * * * *

CONSENT JUDGMENT

This matter came before the Court on the consent of the parties.

Considering the law and the evidence, the stipulations and consent of the parties, and the arguments of their counsel, the court determining that this judgment should issue on the consent of the parties as evidenced by their signatures hereon,

1. IT IS ORDERED, ADJUDGED AND DECREED that the trial of this matter scheduled for February 3, 1997 be and it is hereby CONTINUED WITHOUT DATE.

2. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that these proceedings, including all discovery herein, be and they are hereby STAYED.

3. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that during the pendency of the Stay of these proceedings the ten year license issued to Livingston Downs Racing Association, Inc. on May 27, 1993 and licenses to conduct live race meetings previously issued to Livingston Downs Racing Association, Inc. by the Louisiana State Racing Commission are suspended, and the Commission shall not, except as hereinafter provided in this Consent Judgment, be required to consider the plaintiff as a licensed association. The parties acknowledge the finality of the judgment of the court of Appeal-Fourth Circuit in the proceedings Jefferson Downs v. State Racing Commission, #94-2235, 637 So2d 1279 (La. App. 4 Cir. 1994) regarding the permit issued to the plaintiff pursuant to La. R.S. 4:181 on December 10, 1992.

4. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commission shall consider an application to be filed by Livingston Downs Racing Association, Inc. for a ten (10) year license to operate a racetrack on the property situated in Livingston Parish, which property is more fully described in the applications previously filed by Livingston Downs Racing Association, Inc. with the Commission, and for racing dates for a period not exceeding three racing years, all pursuant to La. R.S. 4:158(B), on or before October 31, 1998.

5. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any dates for which Livingston Downs Racing Association, Inc. may apply to conduct a live race

meeting shall be restricted as follows: (1) for thoroughbred racing: for the period after the traditional close of the Evangeline Downs live race meeting until the traditional opening of the Fair Grounds live race meeting, and (2) for quarterhorse racing: for the period of November through April. Provided however, nothing contained herein shall prevent the Commission from awarding to Livingston Downs Racing Association, Inc. other racing dates which may become available if such dates are requested by Livingston Downs Racing Association, Inc.

6. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any application for permits or licenses to be issued to Livingston Downs Racing Association, Inc., which applications are filed on its own behalf and shall conform to the provisions of La. R.S. 4:158 and 4:147(4)(a) through (g) and 147(5), shall include within the application binding, enforceable commitment letter(s), in an amount not less than TEN MILLION ($10,000,000.00) DOLLARS, which provides for the funding of the construction of the racing facility, including a grandstand, a racing oval and a backside, on the timetable as set forth hereinafter.

7. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that commitment letter(s) shall issue from a source or sources suitable to and acceptable to the Commission, after prompt investigation, which may include utilization of the Racing Investigations Unit of the Louisiana State Police as well as its own staff and consultants, and in which investigation Livingston Downs Racing Association, Inc., its owners and management shall fully cooperate.

8. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Louisiana State Racing Commission,

upon completion of its investigation, shall promptly act upon the application and shall not unreasonably withhold its approval or acceptance of the funding source(s).

9. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon its approval of the funding source(s), as well as the moral and financial qualifications of any partners, shareholders, officers and officials of Livingston Downs Racing Association, Inc. other than Al J. Ransome, then the Louisiana State Racing Commission shall issue to Livingston Downs Racing Association, Inc. a ten year license to operate a racetrack as provided by law and shall approve an application for live race meetings for a period not exceeding three racing years, and shall lift the suspension of the ten year license which issued on May 27, 1993.

10. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the ten year license to be issued shall include simulcasting rights as conferred upon other licensed associations pursuant to La. R.S. 4:149.2, which rights may only be exercised by the licensee so long as it conducts live horse racing for not less than eighty racing days within a twenty consecutive week period at the facility designated in its license. The §149.2 simulcasting rights currently enjoyed by licensed associations under current rules, regulations, policies and practices of the Commission include year-round simulcasting of out-of-state races at the racing facilities of the licensees.

11. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the ten year license to be issued shall not include simulcasting rights as conferred upon other licensed associations pursuant to La. R.S. 4:211 et seq., including but not limited to §214(D). However, this Consent

Judgment would not prohibit Livingston Downs Racing Association, Inc. from applying for licensing under §§211 et seq. in the event of a final decision of the Louisiana Supreme Court favorable to it in the matter on appeal to that court from the 19th Judicial District Court for the Parish of East Baton Rouge in proceedings numbered 399,563 entitled Livingston Downs Racing Association, Inc. v The State of Louisiana (Edwards), et al.

12. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, within the delays indicated below from the date of the issuance of its ten year license by the Commission, Livingston Downs Racing Association, Inc. shall make substantial progress toward the completion of the following matters by the times set forth, and failure to make substantial progress by such times may constitute "just cause" for the suspension or withdrawal of the license by the Commission:

(a) sixty (60) days: submission of an up-to-date business plan to the Commission.

(b) eighteen (18) months: submission of final architectural and engineering plans for the racing facility, bid specifications, and building permits, and environmental and wetlands clearances to the Commission.

(c) two (2) years: awarding of the construction contract for the racing facility and filing construction contract with the Commission.

13. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, within four (4) years from the date of the issuance of its ten year license by the Commission, or by August 31, 2003, whichever is later, Livingston Downs Racing Association, Inc. shall file with the Commission (1) a true copy of the affidavit of substantial completion and

acceptance pf the property by the owner, (2) its first condition book as provided for in Rules of Racing 35:III.5729, and (3) its list of employees and officials as provided for in Rules of Racing 35:III.5701, and failure to do so by such time may constitute "just cause" for the suspension or withdrawal the license by the Commission.

14. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event of delays in construction, which are caused by labor strikes, material shortages, acts of God or of war, then the Court may grant reasonable extensions of the times established in the preceding numbers 12 and 13, if the parties have been unable to agree upon such extensions.

15. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event that Livingston Downs Racing Association, Inc. fails to file an application with binding, enforceable commitment letter(s), in an amount not less than TEN MILLION ($10,000,000.00) DOLLARS, which provides for the funding of the construction of the racing facility, including a grandstand, a racing oval and a backside, on the timetable as set forth hereinabove, then these proceedings shall be dismissed with prejudice at plaintiff's cost.

16. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event an application is timely filed, but the Commission withholds its approval or acceptance of the funding source(s) or otherwise refuses to issue the ten year license, or otherwise refuses to act upon the application in a prompt manner, then Livingston Downs Racing Association, Inc. may after October 31, 1998 obtain judicial review of such action by summary proceedings or in

a trial de novo or otherwise apply to this Court for appropriate relief.

17. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commission shall afford Livingston Downs Racing Association, Inc. on or about April 15th and on or about August 15th of 1997 and 1998 notice of any requests for racing dates which may conflict with those to be sought by Livingston Downs Racing Association, Inc. and shall consider any objections which plaintiff may have to the granting of such dates to any other association.

18. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any party may apply to this Court for a status hearing and this Court shall retain jurisdiction for the enforcement of this Consent Judgment.

JUDGMENT READ, RENDERED AND SIGNED this 15 day of November, 1996 at New Orleans, Louisiana.

(Sgd.) Robin M. Giarrusso
Judge

Consented to and submitted by:

FOR THE PLAINTIFF, LIVINGSTON DOWNS RACING ASSOCIATION, INC.

By: /s/ Al J. Ransome
Al J. Ransome, President

By: /s/ Darlene S. Ransome
Darlene S. Ransome, Esq.
LSBA # 21983
Counsel

By: /s/ Victor A. Sachse, III
Victor A. Sachse, III, Esq.
LSBA # 11645
Counsel

FOR THE DEFENDANT, LOUISIANA STATE RACING COMMISSION

By: /s/ Albert M. Stall
Albert M. Stall, Chairman

By: /s/ Paul A. Bonin
Paul A. Bonin
Assistant Attorney General
LSBA # 3211
Counsel

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RICHARD T. MARTIN
CLERK

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

LIVINGSTON DOWNS RACING ASSOCIATION, INC.

CIVIL ACTION

VERSUS **NO. 96-3430-A-M1**

JEFFERSON DOWNS CORPORATION, FAIR GROUNDS CORPORATION, INC., FINISH LINE MANAGEMENT, INC., BRYAN KRANTZ, MARIE KRANTZ, KAREN J. THOMAS, TERRENCE LEE ODOM, COMMITTEE TO CONTROL GAMBLING, PETER HENRY, GEORGE BOUDREAUX, OSCAR J. TOLMAS, ALBERT STALL, PAYTON COVINGTON, MELINDA M. TUCKER, LARRY BANKSTON, JAMES BEN THOMAS AND W. C. LITTLETON

COMPLAINT FOR DAMAGES AND DEMAND FOR TRIAL BY JURY

Preliminary Statement

1.

This civil action is brought by plaintiff, Livingston Downs Racing Association, Inc. ("LDRA"), a Louisiana corporation, domiciled in Livingston Parish, with its principal place of business in Baton Rouge, Louisiana against

the defendants named herein. The relief sought includes tort damages based on traditional state law causes of action, violation of the Sherman Anti-Trust Laws and 42 U.S.C. 1983, 1985 and 1986. This action seeks treble damages pursuant to enumerated statutes, costs of investigation and suit, interest and attorney's fees under both federal and state law and divestiture of properties obtained through illegal acts in violation of the Sherman Anti-Trust Act.

Jurisdiction

2.

This Court has jurisdiction over this matter under Title 28, §1331, 15 U.S.C. §4, and 42 U.S.C. 1983, 1985 and 1986, in that there is a federal question arising under the laws of the United States.

Venue

3.

Personal jurisdiction and venue in this action are predicated on 18 U.S.C. 196 and on 28 U.S.C. 1391(b) since the defendants are either residents of, are found within, have agents within, have transacted business within, and certain activities of the defendants giving rise to this action took place both within and without the Middle District of Louisiana. These activities have been directed against and caused damages to LDRA whose domicile and business activities are located within the Middle District of Louisiana.

The Parties

4.

Plaintiff, LDRA, is a Louisiana corporation domiciled in the Parish of Livingston, Louisiana, with its temporary business office located in the Parish of East Baton Rouge.

5.

Made defendants herein are Jefferson Downs Corporation, Inc. ("Jefferson Downs"), a Louisiana corporation doing business in Kenner, Louisiana; Fair Grounds Corporation, Inc. ("Fair Grounds"), a Louisiana corporation doing business in New Orleans, Louisiana; Finish Line Management ("Finish Line"), a Louisiana

corporation, doing business in the Louisiana Parishes of Orleans, Jefferson, St. Charles, St. Tammany and Terrebonne; the Committee to Control Gambling, a Louisiana corporation doing business in Baton Rouge, Louisiana; Bryan Krantz, a major domiciliary residing in the Parish of Jefferson, Louisiana, who, on information and belief, at all relevant times was an officer, director and stockholder of the Fair Grounds, Jefferson Downs and Finish Line Management; Marie Krantz, a major domiciliary residing in the Parish of Jefferson, Louisiana, who, on information and belief, at all relevant times was an officer, director and stockholder of the Fair Grounds, Jefferson Downs and Finish Line Management; Karen Thomas, a major domiciliary residing in the Parish of Livingston, Louisiana, who, on information and belief, at all relevant times was an employee in the law offices of Larry Bankston; Terrence Lee Odom, a major domiciliary residing in the Parish of Livingston, Louisiana, who, on information and belief, at all relevant times was the spouse of Tina Odom, who was a long time employee of the law offices of Larry Bankston; Peter Henry, a major domiciliary residing in the Parish of Orleans, Louisiana, who, on information and belief, at all relevant times was an officer and director of the Committee to Control Gambling and an employee of Jefferson Downs; George Boudreaux, a major domiciliary residing in the Parish of Orleans, Louisiana, who, on information and belief, at all relevant times was an officer and director of the Committee to Control Gambling and an employee of Fair Grounds; Oscar Tolmas, a major domiciliary residing in the Parish of Orleans, Louisiana, who, on information and belief, at all relevant times was an appointed member of the Louisiana State Racing Commission ("LSRC") and served as its Chairman; Albert Stall, a major domiciliary residing in the Parish of Orleans, Louisiana, who, on information and belief, at all relevant times was an appointed member of the Louisiana State Racing Commission and served as its Second Vice

Chairman; Peyton Covington, a major domiciliary residing in the Parish of Calcasieu, Louisiana, who, on information and belief, at all relevant times was an appointed member of the Louisiana State Racing Commission; Melinda Tucker, a major domiciliary residing in the Parish of Orleans, Louisiana, who, on information and belief, was an appointed Assistant Attorney General assigned to duties as legal advisor to the Louisiana State Racing Commission; Larry Bankston, a major domiciliary residing in the Parish of East Baton Rouge, Louisiana, who, on information and belief, at all relevant times was a State Senator, Chairman of the committee with oversight over gambling and was lead counsel for Jefferson Downs, Fair Grounds, Finish Line Management, Committee to Control Gambling, Karen Thomas and Terrence Lee Odom in legal matters relating to LDRA; Ben Thomas, a major domiciliary residing in the Parish of Caddo, Louisiana, who, on information and belief, at all relevant times was an appointed member of the Louisiana State Racing Commission; and W.C. Littleton, a major domiciliary residing in the Parish of Ouachita, Louisiana, who, on information and belief, at all relevant times was an appointed member of the Louisiana State Racing Commission.

6.

The defendant members of the LSRC constitute a majority and controlling vote on all LSRC matters affecting LDRA.

The Scheme and Conspiracy

7.

The defendants named herein acted at times in conspiracy among themselves, and at times alone, unknown at the time to plaintiff, to devise, intend to devise and participate in a scheme to violate the Sherman Anti-Trust Act by creating a monopoly on live horse racing business and off-track wagering business in a defined market area; by acts in restraint of trade designed to prevent LDRA from entering into competition in the defined market area and acting under

color of state law to commit acts in furtherance of the scheme to monopolize and to violate the constitutional rights of LDRA and the citizens of Livingston Parish to a fair and impartial election; to deprive LDRA of property without due process of law; and to deny LDRA equal protection of the laws, all in violation of 42 U.S.C. 1983, 1985 and 1986. As a further result of this scheme, the people of Livingston Parish were denied jobs and revenue and the horsemen of Louisiana were deprived of jobs and millions of dollars in purse money generated by live horse racing and off-track wagering in the defined market area.

Background of the Scheme

8.

It is respectfully alleged that the relevant market for this case is the 100 mile radius from the Fair Grounds Race Track, pursuant to La.R.S. 4:147(1)(a), which prohibits race meetings with the same or overlapping dates within a 100-mile radius.

9.

The Louisiana statutory scheme to regulate the racing industry centers around La.R.S. 4:147(1)(a), which prohibits racing with the same or overlapping racing dates within a 100-mile radius of any race tracks. It provides in pertinent part:

> The Commission shall carry out the provisions of this part, including the following specific duties:
>
> (1) to set the dates during which any race meeting may be conducted in this state, including dates which limit racing on particular tracks for quarter horses only, provided that:
>
> (a) it shall prohibit the conducting of any thoroughbred race meetings having the same or overlapping dates for such race meetings at thoroughbred race tracks within a radius of 100 miles of each other; . . .

10.

Pursuant to La. R.S. 4:147(1)(a), Jefferson Downs and Fair Grounds both historically operated within a common 100-mile radius, operating respectively from April to November, and from November to March. Each was therefore assured half the year would be run without competition within the 100-mile radius of their respective tracks.

11.

By Act 203 of 1987, effective June 30, 1987, the Louisiana legislature established off-track wagering. La.R.S. 4:211, et seq. governs the authorization, establishment, ownership and management of off-track wagering facilities.

12.

Pursuant to La.R.S. 4:211, et seq., only those race tracks conducting race meetings during the 1986-87 racing season and licensed prior to June 30, 1987 may be licensed to own and/or operate off-track wagering facilities in Louisiana.

13.

On information and belief the existing race tracks granted exclusivity by this restriction caused this provision to be placed into law to protect existing monopolies and to restrain other associations licensed by the LSRC subsequent to 1986-87 from entering into the live racing and off-track wagering business.

14.

Similar to the statutory 100-mile radius rule for race tracks, off-track wagering facilities are statutorily controlled by a 55-mile radius, measured from the parish seat in the parish where the off-track wagering facility is located. La.R.S. 4:215(b) provides a formula for general ownership of off-track wagering facilities when more than one live racing facility is located less than 55 miles from the parish seat in the parish which they are located. La.R.S. 4:215(c) provides for ownership of off-track wagering facilities in parishes whose parish seat is 55 miles or more from the live racing facility.

15.

In 1987, when the off-track wagering provisions were established, Jefferson Downs and the Fair Grounds were owned separately. Marie Krantz and Bryan Krantz were the majority owners of Jefferson Downs. They did not, however, have a majority interest in the Fair Grounds.

16.

Louisiana Offtrack Betting Corporation, Inc. was incorporated by John A. Lohman on January 22, 1987. Upon information and belief, the officers and directors were John A. Lohman, President, Bryan Krantz, Executive Vice President, and Marie Krantz, Statutory Agent.

17.

On information and belief, this company was incorporated for the purpose of lobbying the Louisiana Off-track Wagering Law which was enacted in 1988. John A. Lohman was the chief lobbyist of this legislation and responsible for the passage of this legislation. John A. Lohman was paid by Bryan and Marie Krantz through Louisiana Offtrack Betting Corporation for his lobbying efforts which resulted in the passage of the Louisiana Off-track Wagering Law, LSA-R.S. 4:211, et seq.

18.

On information and belief, John A. Lohman together with and under the direction of Marie Krantz and Bryan Krantz were the engineers of the Off-track Wagering Law.

19.

On information and belief, Marie Krantz and Bryan Krantz, at the same time that they were lobbying for passage of the Off-track Wagering Law, were also engineering and conspiring to create a monopoly of the off-track wagering facilities and live racing facilities within the defined market.

20.

On information and belief, Marie Krantz and Bryan Krantz were negotiating for the purchase of the Fair Grounds Corporation and its proposed off-track wagering facilities at

the same time they were lobbying for passage of LSA-R.S. 4:211, et seq.

21.

After they established off-track wagering facilities pursuant to La.R.S. 4:211, et seq., Jefferson Downs and the Fair Grounds, were governed by La.R.S. 4:215(b) because their facilities were within a 55-mile radius of the parish seat. In lieu of the joint ownership of off-track wagering facilities, as permissible in La.R.S. 4:215(b), they agreed to divide up the parishes within their defined 55-mile radius.

22.

Paric, Inc., the successor to Finish Line was incorporated by John A. Lohman on March 1, 1983. On February 5, 1988 John A. Lohman changed the name of the corporation from Paric, Inc. to Finish Line Management, Inc. and added Bryan Krantz and Marie Krantz as officers and directors of the corporation. In June of 1988 following the passage of the off-track wagering legislation, the registered address of the corporation was changed to 1300 Sunset Boulevard, Kenner, Louisiana (which is the location of Jefferson Downs). John A. Lohman was replaced as agent for service of process for the corporation with Rickie Glenn Conway, nephew of Marie Krantz and employee of Marie Krantz. John A. Lohman was replaced as President by Bryan Krantz. Rickie Glenn Conway was appointed Vice President and General Manager of the corporation and Marie Krantz was named Secretary/Treasurer of Finish Line.

23.

In June of 1988, Bryan and Marie Krantz became 100% stockholders of Finish Line. Finish Line was to operate all off-track wagering facilities owned by Jefferson Downs. Finish Line entered into a management contract with Jefferson Downs whereby Jefferson Downs was contractually obligated to pay Finish Line 80% of all commissions earned, plus all admissions and concessions earned by the off-track wagering facilities.

24.

On information and belief, Finish Line was incorporated as a Sub-chapter S corporation.

25.

In 1989, Bryan Krantz and Marie Krantz obtained 100% ownership of stock in Jefferson Downs, also a Sub-chapter S corporation.

26.

Jefferson Downs built four off-track wagering facilities in the immediate area, and aggressively promoted its off-track wagering facilities, and, upon information and belief, allowed live racing to deteriorate. Income from the off-track wagering facilities, the majority of which goes to Finish Line, and essentially to Bryan and Marie Krantz, continued to increase. Upon information and belief, live racing at Jefferson Downs reflected a potential loss.

27.

After the closure of Jefferson Downs as a live racing facility in 1992, the LSRC continues to let it operate as an off-track wagering facility. The majority of the income from this additional off-track wagering facility goes to Finish Line, and essentially for the benefit of Bryan and Marie Krantz.

28.

On information and belief, the five off-track wagering facilities formerly owned by Jefferson Downs, now transferred to Fair Grounds, are allowed by the LSRC to file its required reports as if it were a live racing facility. There are separate reports filed with the LSRC by Fair Grounds for its original off-track betting parlors, and separate reports filed by Finish Line Management for the five former Jefferson Downs off-track wagering facilities.

29.

In 1990, Fair Grounds was the only live racetrack operating within a 100 mile radius of Jefferson Downs. In 1990, Bryan and Marie Krantz obtained controlling interest in Fair Grounds, a publicly owned corporation. At that point

Bryan and Marie Krantz had secured a monopoly on live horse racing within a 100-mile radius of Jefferson Downs.

30.

After Bryan and Marie Krantz acquired controlling interest in Fair Grounds, the Fair Grounds continued to operate its off-track wagering facilities.

31.

In August 1992, upon information and belief, under the guise that Jefferson Downs would lose money (without benefits of off-track betting revenue), Bryan Krantz advised the LSRC that Jefferson Downs would close in November 1992, and requested that the off-track wagering facilities owned by Jefferson Downs be transferred to Fair Grounds. Upon information and belief, had the revenues from the off-track wagering facilities been included, Jefferson Downs' financial statement would have proved to be the most profitable race track in Louisiana.

32.

On information and belief, Bryan and Marie Krantz elected to close Jefferson Downs because it was in competition with the Fair Grounds.

33.

Subsequent to the closure of Jefferson Downs, and concurrent with the transfer of the former Jefferson Downs OTB parlors to the Fair Grounds, Bryan Krantz and Marie Krantz voted their controlling interest in the Fair Grounds to approve a contract with Finish Line, which provided that Finish Line retain 99.9% of the pari-mutuel revenue generated by the former Jefferson Downs off-track wagering parlors. In addition, all concessions, admissions and video poker revenues are retained by Finish Line.

34.

On information and belief, Bryan and Marie Krantz planned to transfer the Jefferson Downs parlors to Fair Grounds with Finish Line Management, their wholly owned company, operating these off-track wagering parlors. It was their intent that all profits from the operation of these five

off-track wagering parlors be funneled directly to them through Finish Line Management thereby evading distribution of profits to Fair Grounds shareholders.

35.

On information and belief, Bryan and Marie Krantz acted in concert with those defendants discussed who acted under color of state law.

36.

In October of 1992, LDRA was formed to replace the live racing dates abandoned by Jefferson Downs, together with additional quarter horse racing dates. On October 26, 1992, LDRA applied for a racing permit with the LSRC. Despite strenuous opposition by defendants Jefferson Downs and Fair Grounds, the LSRC awarded a racing permit to LDRA on December 10, 1992.

37.

The site in Livingston Parish which was approved by the LSRC is located within the 100-mile radius for live racing and the 55-mile radius for off-track wagering parlors formerly shared by Jefferson Downs and the Fair Grounds.

38.

In addition to the live race track, LDRA's business plan included the construction of a major truck stop, a show horse arena, a 200-unit motel and a recreation vehicle park. The business plan has subsequently been amended to include plans for conducting Nascar sanctioned stock car racing and N.H.R.A. drag racing.

39.

The development proposed by LDRA would have been the largest employer in Livingston Parish and would generate significant revenues for both state and local government. LDRA's project was the type which fell with the stated purpose of the racing statutes contained in La.R.S. 4:141, et seq.

Specific Acts in Furtherance of The Conspiracy to Protect the Monopoly

40.

At that point, defendants began a series of actions in order to prevent LDRA from ever opening, and thereby allowing defendants to maintain their monopoly within the market. Defendants' actions include the filing of various sham lawsuits, as fully discussed below. Defendants' motives in filing these baseless lawsuits, upon information and belief, was not based upon realistic expectations of success on the merits, but was instead an improper attempt to interfere directly with the business of LDRA, a potential competitor of the defendants.

41.

On December 11, 1992, just one day after the LSRC granted a racing permit to LDRA, defendants Jefferson Downs and Fair Grounds, as well as other parties, filed suit against the LSRC in the case captioned Jefferson Downs Corporation, Inc., et al. v. Louisiana State Racing Commission, Suit No. 92-20961, Division "G," Civil District Court for the Parish of Orleans, State of Louisiana. Defendants sought to annul and set aside the decision of the LSRC on December 10, 1992, granting a racing permit to LDRA. The defendants were being represented as petitioners by Salvador Anzelmo in the CDC litigation and Larry Bankston of the law firm Hoffman, Sutterfield, Ensenat & Bankston in collateral litigation filed against LDRA, as discussed below.

42.

On information and belief this baseless lawsuit was filed for the sole purpose of preventing LDRA from conducting the required referendum in Livingston Parish to permit live horse races.

43.

On December 14, 1992, defendants supplemented and amended their petition, seeking an order staying a referendum election in Livingston Parish on whether the

citizens of Livingston Parish wanted live racing within the parish, and prohibiting the Secretary of State from putting the proposition to authorize racing meetings in Livingston Parish on the ballot.

44.

This litigation continued through 1994, including various decisions by the trial court being ruled upon by the Louisiana Fourth Circuit Court of Appeal and the Louisiana Supreme Court. By decision of May 26, 1994, the Louisiana Fourth Circuit Court of Appeal upheld the Racing Commission's decision granting the racing license to LDRA. During the pendency of this litigation, however, defendants continued to use the legal system in an attempt to interfere directly with the business of LDRA, in order to maintain their monopoly by preventing LDRA from ever conducting live racing in Livingston Parish.

45.

The Police Jury for the Parish of Livingston already had an election scheduled to be held on January 16, 1993, and added the proposition of whether the business of horse racing would be conducted in Livingston Parish to the regularly scheduled election. Because of the actions by the defendants in filing their lawsuit in Orleans Parish seeking to stay the referendum election regarding racing in Livingston Parish, Al J. Ransome filed suit against the Secretary of State for the State of Louisiana, seeking a writ of mandamus, directing the Secretary of State to perform all administrative duties in connection with the holding of the special election called for on January 16, 1993 in Livingston Parish. The suit was captioned Al J. Ransome v. The Secretary of State for the State of Louisiana, Suit No. 67,710, 21st Judicial District Court, Parish of Livingston, State of Louisiana.

46.

On January 4, 1993, a petition of intervention was filed in Suit No. 67,710 by Karen Thomas. Karen Thomas is a legal secretary in the firm of Larry Bankston, counsel of record for Jefferson Downs and Fair Grounds in the

Louisiana State Racing Commission lawsuit filed by the same defendants. Karen Thomas sought to be allowed to intervene and to oppose the writ of mandamus through preliminary and injunctive relief. The intervention alleged as the basis for opposition to the writ of mandamus that the "notice" provisions of the Louisiana Election Code had not been complied with.

47.

On January 4, 1993, Karen Thomas filed a separate suit for preliminary and permanent injunction against the Secretary of State of the State of Louisiana in the suit captioned Karen Thomas v. Secretary of State of Louisiana, Suit No. 67,728, Division "B," 21st Judicial District Court, State of Louisiana. The petition sought to restrain, enjoin and prohibit the Secretary of State from conducting the special referendum election in Livingston Parish on January 16, 1993.

48.

On information and belief Larry Bankston directly solicited the representation of Thomas and Thomas' name to benefit the real parties in interest which were his clients, the Krantz family gambling interests.

49.

Defendant, Committee to Control Gambling, was incorporated on January 8, 1993 to oppose the referendum election in Livingston Parish. This was just eight days prior to the election. Upon information and belief, the officers of the Committee, Peter Henry and George Boudreaux were and are employees of Jefferson Downs and Fair Grounds. Upon information and belief, the Committee was incorporated by the law offices of Larry Bankston. Harris and Associates, who also represents the Krantzs in their various corporations, was hired by the Committee to conduct a massive negative media campaign in Livingston Parish in hopes of persuading citizens of Livingston Parish to vote down the referendum election on live racing in Livingston Parish.

50.

On information and belief, the Committee to Control Gambling was organized to conceal the involvement of the Krantz family gambling interests in opposing the referendum election, through false and misleading campaign literature and advertisement, all in violation of the election laws of the State of Louisiana.

51.

On information and belief, it was necessary that the Krantz family gambling interests, the largest purveyors of video poker in Louisiana, hide their involvement in the Committee to Control Gambling which conducted a massive negative media campaign citing the evils of live horse racing, off-track wagering and video poker.

52.

On information and belief, the Committee was incorporated as a 501(C)(3) corporation. Participation in an election campaign by a 501(C)(3) is in violation of the Internal Revenue Code.

53.

On information and belief, the Fair Grounds and/or Bryan Krantz and Marie Krantz allowed a video to be filmed at the Fair Grounds race track depicting a child sitting on an adult's lap playing a video poker machine. On information and belief, this commercial was engineered and paid for by Bryan Krantz and Marie Krantz and/or the Krantz family gambling interests and was produced by Continental Advertising, Inc. which is owned by Bryan and Marie Krantz.

54.

On information and belief, Bryan and Marie Krantz supplied this video to the Committee to Control Gambling and authorized its use as a commercial on television stations located in East Baton Rouge Parish, which broadcast into Livingston, East Baton Rouge and West Baton Rouge Parishes to oppose the January 16, 1993 referendum election.

55.

On information and belief, the defendants, deliberately through this video, allowed false and misleading representations to be made to the public in violation of state law.

56.

On information and belief, these efforts by defendants were designed simply to delay and prevent LDRA from ever providing live racing in Livingston Parish, thereby maintaining the monopoly held by defendants.

57.

On information and belief, Larry Bankston directed and facilitated the actions of the Committee to Control Gambling in order to prevent LDRA from ever providing live racing in Livingston Parish, and thereby maintaining the monopoly held by defendants.

58.

On February 14, 1993 the Committee to Control Gambling filed a campaign contribution report with the Commission on Ethics for Public Employees, Campaign Finance Division. Schedule A-1 of this report listed the contributors as Continental Advertising, Inc., $10,000.00, Exposition Apartments, Inc., $10,000.00, Fair Grounds Corporation, $10,572.50, Hans-Horizon Partnership, $5,000.00 and Village Row Partnership, $10,000.00. On information and belief, all of these entities are either owned and controlled by Bryan and Marie Krantz and/or their agents. Continental Advertising, Inc. was incorporated by David R. Sherman, an attorney who represents the Krantzs. On information and belief, Bryan and Marie Krantz own Continental Advertising, Inc. Exposition Boulevard Apartments, Inc. was a partnership with the partners listed as William A. Kurtz, Stephen A. Faulkner, Jr. and John B. Trainor. William A. Kurtz was a former Vice President of Fair Grounds and an employee of Bryan and Marie Krantz. Fair Grounds is majority owned and controlled by Bryan and Marie Krantz. Hans-Horizon Partnership is composed of

Marie Krantz and Wayne E. Thomas. Village Row Partnership is composed of Marie Krantz and Lawrence W. Stoulig, Jr., who is also the accountant for Marie Krantz and her various related entities.

59.

On information and belief, the Committee to Control Gambling conducted a direct mailing campaign to all registered voters in Livingston Parish opposing the January 16, 1993 referendum election. This campaign consisted of a sophisticated three panel brochure which was mailed by bulk mail from the printing offices of Jesse Bankston, uncle of Larry Bankston, using Jesse Bankston's bulk mailing permit number.

60.

On information and belief, Larry Bankston directed and facilitated the actions of the Committee to Control Gambling in order to simply prevent LDRA from ever providing live racing in Livingston Parish, and thereby maintaining the monopoly held by defendants.

61.

LDRA filed its application to the LSRC for a 10-year racing license to conduct specific racing dates in September 1993 through April 1994 and requested to be placed on the January 21, 1993 LSRC meeting agenda. The LSRC made no reply to these requests by LDRA and this item was not placed on the agenda of the LSRC meeting nor was it heard at the January 21, 1993 meeting.

62.

On information and belief, Oscar Tolmas acting as Chairman of the LSRC under color of state law and without legal authority, assumed total control over which requests made to be placed on the LSRC agenda would be accepted for hearing.

63.

On January 8, 1993, the petition for writ of mandamus was granted in Suit No. 67,710, forcing the Secretary of State to hold the referendum election in

Livingston Parish. The court denied the preliminary and permanent injunction requested by defendant Karen Thomas, as intervenor.

64.

On January 11, 1993, Karen Thomas filed a notice of suspensive appeal and filed an emergency writ to the First Circuit Court of Appeal, in Suit No. 93-CW-0031. On January 12, 1993, the emergency writ was denied by the First Circuit Court of Appeal.

65.

On January 12, 1993, an emergency writ was taken to the Louisiana Supreme Court by Karen Thomas, captioned No. 93-CC-0103. On January 14, 1993, the emergency writ was denied by the Louisiana Supreme Court.

66.

Karen Thomas then filed for rehearing on January 15, 1993 to the Louisiana Supreme Court which was denied. Larry Bankston and his law firm successfully kept the Thomas litigation alive until October 13, 1995 when the First Circuit Court of Appeal dismissed the case as moot.

67.

On information and belief, this litigation was kept alive as an obstacle to prevent the development of LDRA by putting potential investors on notice that if this suit was successful, LDRA could not legally operate.

68.

All of these efforts by defendants were, upon information and belief, simply to prevent LDRA from ever providing live racing in Livingston Parish, and thereby maintaining the monopoly held by defendants.

69.

Despite the massive negative media campaign waged against the January 16, 1993 referendum election the proposition of "shall the business of horse racing be conducted within the Parish of Livingston . . ." was overwhelmingly passed by a 54% margin.

70.

On February 25, 1993, Terrence Lee Odom, an alleged "concerned citizen" and spouse of Tina Simoneaux Odom, former 9-year employee of the law firm of Hoffman, Sutterfield, Ensenat and Bankston, through his attorney Larry Bankston, filed a Petition to Nullify the January 16, 1996 referendum election, Suit #68,130, Division "F," Livingston Parish.

71.

On information and belief, Larry Bankston directly solicited the representation of Odom and Odom's name to benefit the real parties in interest which were his clients, the Krantz family gambling interests.

72.

The court, pursuant to LSA-R.S. 18:1409 of the Louisiana election code, set a trial on Odom's petition to nullify election in Suit #68,130 on March 1, 1993. Larry Bankston, counsel for Odom, filed a Motion for Continuance, on March 1, 1993 which was denied by the trial judge. On March 1, 1993 the court, on its own motion, dismissed the petition as premature, because the validity of LDRA's racing license was in litigation in separate proceedings in Orleans Parish, Civil District Court. The trial court granted Odom a suspensive appeal.

73.

The First Circuit Court of Appeal reversed the trial court's finding of prematurity in Odom's suit and remanded the case to the trial court. LDRA and the Livingston Parish Police Jury attempted to conduct discovery in this litigation, which was vehemently opposed by counsel for Odom who has succeeded in keeping this litigation alive while impeding discovery and delaying a trial on the merits.

74.

All of these efforts, upon information and belief, are simply to prevent LDRA from ever providing live racing in Livingston Parish and thereby maintaining the monopoly created for defendants and thereby putting potential investors

on notice that if this suit was successful, LDRA could not legally operate.

75.

At the January 21, 1993 LSRC meeting, the license application of the Fair Grounds to transfer the OTB license and parlors formerly owned by Jefferson Downs to Fair Grounds was listed on the meeting agenda. This item was tabled by the LSRC at its December 1992 meeting. At the December meeting, the LSRC voted to place in escrow any and all funds earned by the horsemen for purse money from the operation of these parlors until such time as the transfer is voted upon. The LSRC further voted to conduct a full evidentiary hearing on the transfer of these parlors. This was not done then, nor, upon information and belief, has this ever been done. The LSRC continued this matter at the January 1993 meeting.

76.

On January 29, 1993 LDRA filed a second formal application with the LSRC for a 10-year racing license to conduct specific race dates in September 1993 through April 1994 and requested to be placed on the March 11, 1993 LSRC meeting agenda. LDRA received no response from the LSRC. LDRA was not placed on the March 11, 1993 LSRC meeting agenda, nor was it heard at the March 11, 1993 LSRC meeting. On February 4, 1993 Oscar J. Tolmas, Chairman, unilaterally, without action by the other racing commissioners, released the funds placed in escrow by full vote of the LSRC at its December 1992 meeting to Jefferson Downs for use "by Bryan Krantz as he sees fit."

77.

On January 13, 1993 LDRA filed a Petition for Damages Under the Louisiana Unfair and Deceptive Trade Practices Act and for Temporary Restraining Order, Preliminary and Permanent Injunction, Suit #67,822, Division "C," Livingston Parish. The original defendants were Committee to Control Gambling, Harris and Associates and Southern Media and Opinion Research and the suit was

amended to add Jefferson Downs, Fair Grounds, Finish Line Management, Louisiana Downs, Delta Downs and Evangeline Downs as defendants.

78.

LDRA notified all counsel of record regarding its application for a temporary restraining order. Larry Bankston was not listed as counsel of record for any of the defendants at this time. However, Larry Bankston filed a writ with the First Circuit Court of Appeal seeking to reverse the TRO on the grounds that he as counsel for Jefferson Downs had not been notified. **Bankston deliberately lied in order to obtain reversal of the TRO**. At that time, Bankston had never appeared as counsel of record for Jefferson Downs, Fair Grounds, Finish Line Management, Bryan Krantz or Marie Krantz in any action in any court involving LDRA or any other party.

79.

On information and belief, these efforts by defendants were designed simply to delay and prevent LDRA from ever providing live racing in Livingston Parish thereby maintaining the monopoly held by defendants.

80.

It was not until February 4, 1993, that Larry Bankston was substituted as counsel in Suit #67,822 for Committee to Control Gambling, Harris and Associates and Southern Media and Opinion Research, Jefferson Downs, Fair Grounds and Finish Line. Bankston immediately filed a Motion for a Legislative Continuance pursuant to LSA-R.S. 113:4163 and was granted a continuance until sixty days after the date of the legislative adjournment of discovery of all Bankston's clients who were the majority of the defendants.

81.

On information and belief these efforts by defendants were designed simply to delay and prevent LDRA from ever providing live racing in Livingston Parish, thereby maintaining the monopoly held by defendants.

82.

On March 22, 1993 LDRA filed its third formal application for a 10-year racing license to conduct specific race dates in September 1993 through April 1994 to be placed on the April 15, 1993 LSRC meeting agenda. At the April 15, 1993 LSRC meeting Al Ransome, Chairman and CEO of LDRA, requested of Chairman Tolmas that he place the item of LDRA's license prior to the transfer of the Jefferson Downs OTB parlors to Fair Grounds in order to protect LDRA's right to assert a claim to the parlors. Chairman Tolmas refused, stating that LDRA would not get its license until the Fair Grounds got the Jefferson Downs OTB parlors.

83.

At the April 15, 1993 LSRC meeting, during the hearing on the Fair Grounds' application for the transfer of the Jefferson Downs OTB parlors, representative Arthur Morrell requested legislative privilege and a motion was passed by the LSRC granting legislative privilege to Representative Morrell and postponed the matter of the transfer of the Jefferson Downs OTB parlors to Fair Grounds until sixty days after the end of the legislative session.

84.

Immediately following this motion Chairman Tolmas called a recess and an illegal ex parte discussion was held between Chairman Tolmas, Albert Stall, Melinda Tucker and representatives of the Fair Grounds.

85.

Immediately thereafter, when the issue of LDRA's license was taken up, Ms. Tucker, Assistant Attorney General assigned to the LSRC, read into the record that if LDRA was granted its license and racing dates LDRA could have a legal challenge to claim a share of the Jefferson Downs OTB parlors. The LSRC then deferred action on LDRA's application without reason and LDRA was told to reapply in May.

86.

All of these efforts, upon information and belief, are simply to prevent LDRA from ever providing live racing in Livingston Parish, and thereby maintaining the monopoly created for defendants.

87.

On April 20, 1993 LDRA filed a Petition for Writ of Mandamus, Suit #93-6366, Division "F," Civil District Court for the Parish of Orleans, against the LSRC, requesting the court to issue a writ of mandamus compelling the LSRC to convene a meeting on or before May 1, 1993 to consider LDRA's application for racing dates and to grant LDRA's application for the fall, 1993 and spring, 1994 racing season.

88.

On April 22, 1993 Larry Bankston, counsel for Odom, Suit #68,130, 21st JDC, (also counsel for Karen Thomas, Fair Grounds, Jefferson Downs, Finish Line Management, Committee to Control Gambling, Harris and Associates, Southern Media and Opinion Research and Bryan and Marie Krantz) filed a petition for intervention on behalf of Odom, who had no standing in this matter, in the Orleans Suit #93-6333 and a motion for continuance asserting legislative privilege. These efforts by defendants were designed simply to delay and prevent LDRA from ever providing live racing in Livingston Parish thereby maintaining the monopoly held by defendants.

89.

Eventually on April 28, 1993 the mandamus was heard before Judge Magee who ordered that the matter of LDRA's application for fall, 1993 and spring, 1994 racing dates and 10-year license be heard at the May meeting of the LSRC and that this delay will not prejudice LDRA's rights.

90.

On April 9, 1993 LDRA filed a Petition for Damages Under the Louisiana Unfair and Deceptive Trade Practices Act and for Damages Under the Louisiana Anti-Restraint of Trade and Anti-Monopoly Act and for Temporary

Restraining Order, Preliminary and Permanent Injunction, Suit #68,605, Division "C," Livingston Parish. The named defendants were Bryan Krantz, Marie Krantz, Finish Line Management, Fair Grounds Corporation and Oscar J. Tolmas, Individually. Larry Bankston immediately enrolled as counsel of record for all Fair Grounds related defendants which were the majority of the defendants.

91.

On May 4, 1993 Suit #67,822 and Suit #68,605 were consolidated. Fair Grounds, Jefferson Downs and Finish Line Management immediately filed numerous exceptions.

92.

The LSRC held its next meeting on May 27, 1993 at which time the LSRC was served with a temporary restraining order barring any action on the transfer of the Jefferson Downs OTB parlors and license to Fair Grounds. This order was issued by Judge Bernadette Johnson in Suit 93-8567, Civil District Court for the Parish of Orleans. Representative Morrell was counsel of record for the plaintiff, Bart Johnson, in this action against Jefferson Downs. Representative Morrell previously requested and was granted a legislative continuance at the April 15, 1993 LSRC meeting. However, at its May 27, 1993 meeting the LSRC revoked this continuance, ignored the temporary restraining order issued by the Orleans district court and approved the Fair Grounds' application for transfer of the Jefferson Downs OTB license and transfer of the OTB parlors to the Fair Grounds. The LSRC was held in contempt by the Fourth Circuit Court of Appeal for its violation of the writ of mandamus issued by Judge Johnson. This matter is on appeal by the LSRC to the Louisiana Supreme Court. Only after the transfer of the Jefferson Downs OTB license and parlors to Fair Grounds did the LSRC award LDRA a 10-year racing license and fall, 1993 and spring, 1994 racing dates.

93.

On June 30, 1993 LDRA obtained a $17 million default judgment against Chairman Oscar Tolmas in the consolidated antitrust actions, Suit #67,822 and Suit #68,605. Chairman Tolmas was embroiled in litigation with LDRA, filing a Petition for Nullity and for Injunctive Relief in Orleans, Suit #93-13365. Throughout this entire litigation, Chairman Tolmas remained on the commission despite LDRA's requests for his removal and continued to address and vote on matters pertaining to LDRA. On information and belief, Chairman Tolmas acted under color of state law and in concert with defendants to delay and prevent LDRA from ever conducting live racing in Livingston Parish thereby maintaining the monopoly held by the defendants.

94.

On information and belief, Mr. Tolmas' conduct towards LDRA was not only improper but he was acting out of malice under color of state law.

95.

The LSRC continually ignored LDRA's requests to be placed on their meeting agendas for consideration of its OTB license. On June 29, 1993 the LSRC advised LDRA that it could never be put on the agenda for consideration of its OTB license. LDRA made two subsequent requests with the LSRC, December 23, 1993 and January 8, 1994 for preliminary approval to establish an OTB facility on site at LDRA's main facility pursuant to LSA-R.S. 4:213 and R.S. 4:214(D). These requests were denied by the LSRC. All other licensed racing associations are allowed to operate their main facilities as OTB's.

96.

Unable to obtain any relief before the LSRC, on October 19, 1993 LDRA filed a Petition for Declaratory Judgment regarding the constitutionality of the restrictive definition contained in LSA-R.S. 4:211(5), Suit #399,563, 19th JDC, East Baton Rouge Parish.

97.

In October of 1993, after having been awarded racing dates for the 1994-95 racing season, LDRA was advised by Paul Burgess, Executive Director of the LSRC, to submit a letter to the LSRC requesting return of its $5,000.00 deposit for the 1993-94 racing dates. Since the deposit for the 1993-94 had been replaced by the deposit for the 1994-95 racing dates it was customary to return the deposit for the 1993-94 racing dates. Although this refund has been routinely approved by the chairman in the case of all other racing associations, LDRA was required to appear before the LSRC. At the LSRC meeting of October 27, 1993 Chairman Tolmas recused himself because he was in litigation with LDRA (the only time that he did so) and turned the meeting over to the Second Vice Chairman, Albert Stall, even though the First Vice Chairman was present. There is no provision of state law that permits a commission member to recuse himself to avoid a conflict of interest.

98.

At the October 27, 1993 Albert Stall conducted an inquisition of LDRA on matters totally unrelated to the deposit matter on the agenda. Acting without logical basis, the LSRC voted to refuse to refund the deposit until after the racing dates relinquished by LDRA for the 1993-94 meet would have ended had the meet been run. The LSRC has continually refused to refund this deposit as well as other deposits in their possession to LDRA. On information and belief, the LSRC actions were under color of state law and were designed to harass LDRA, and deplete its assets in furtherance of preventing LDRA from ever providing live racing in Livingston Parish thereby maintaining the monopoly held by defendants.

99.

On December 28, 1993, LDRA again applied to be placed on the agenda of January 27, 1994 LSRC meeting for consideration of a preliminary license to operate as an O.T.B. site on the site of its race track. This was done in accordance

with the law and rules of racing. LDRA properly argued that R.S. 4:213 grants the right to own and operate O.T.B. parlors, while the definition contained in R.S. 4:211(5) operates to deny that right. It further alleged that the Racing Commission has never promulgated rules to interpret and resolve the conflicting sections of the statute, and the unsupported opinion of its attorney was insufficient grounds to deny a hearing to LDRA. It was specifically requested that prompt notification (the law requires 20 days notice) of approval to be on the agenda, citing the need to subpoena witnesses and records necessary to present its case. LDRA clearly stated that its case was based on the interpretation of conflicting sections of the law, and not a challenge to the constitutionality of the law.

100.

Chairman Tolmas again refused to respond to LDRA's letter of December 28, 1993, and refused to advise of his decision not to place LDRA on the LSRC meeting agenda until the day notices for meetings were mailed, which was six days before the meeting.

101.

LDRA immediately requested that subpoenas be issued and also requested a response from the LSRC if there were a problem. On information and belief, Larry Bankston on January 21, 1994 in an illegal ex-parte communication with Oscar Tolmas, urged Tolmas to deny LDRA's application. Bankston sent a letter to the LSRC filled with misrepresentations of facts and alleged strong opposition by the Governor to LDRA, which, upon information and belief untrue.

102.

On January 24, 1994, Larry Bankston, on behalf of the Fairgrounds Corporation filed with the LSRC a Motion to Quash LDRA's subpoenas and requested that the Commission not take any action on LDRA's request, pending outcome of a suit filed by LDRA for Declatory Judgment on the constitutionality of R.S. 4:211(5). Bankston did not copy

LDRA with this correspondence. Under administrative law, the Fair Grounds was without standing to file such a motion. Mr. Bankston's motion clearly indicated that the Commission had shared in an ex parte communication with Bankston all of LDRA's correspondence. However, the Commission did not provide LDRA with a copy of Mr. Bankston's motion or letters, nor did Bankston copy LDRA with any of its correspondence with the LSRC.

103.

Although the LSRC claims that it did not act on this motion, it nevertheless it refused to issue the subpoenas.

104.

On January 27, 1994, when LDRA's request was heard, it learned for the first time of the motion to quash. Prior to allowing LDRA to be heard, Melinda Tucker read into the record a history of LDRA's appearances before the Commission which, on information and belief, was deliberately slanted to discredit LDRA before the Commission, and also emphasized Bankston's misrepresentation of the Governor's opposition.

105.

Although all witnesses sought to be subpoenaed by LDRA were present, Chairman Tolmas, at the urging of Melinda Tucker, refused to allow LDRA to call witnesses. Although all documents requested were in the possession of the Commission, the Commission refused to provide such records. Over objections of Melinda Tucker, Chairman Tolmas agreed to let LDRA proffer into the record questions which would have been asked of the witnesses. LDRA was denied the right to question Melinda Tucker on questions of law and the basis of her interpretation of the conflicting statutes in favor of the Fairgrounds Corporation.

106.

Although a representative of Mr. Bankston's law firm, Hoffman, Sutterfield, Ensenat and Bankston, was present, Ms. Tucker asked that Mr. Sal Anzelmo be allowed to speak for Mr. Bankston. Throughout the hearing, Ms. Tucker

prompted and urged Mr. Anselmo to object or respond to LDRA's presentation. On numerous occasions, LDRA's presentation was interrupted to inquire how much longer it would be, and finally the presentation was cut off by the Chairman. It was clearly obvious that LDRA was allowed to speak as merely a nuisance. Thereafter, without discussion, the Commission voted to take no action until the issue of the Declaratory Judgement was final. Since this process could take years, the Commission has placed another barrier to insure that the Fairgrounds monopoly will continue, and the horsemen will be denied racing dates until after the issue is resolved, assuming LDRA manages to keep alive its efforts.

107.

At the April 29, 1994 LSRC meeting, the LSRC, without the required Bertucci hearing, Board of Medical Supervisors v. Bertucci, 593 So.2d 798, (La.App. 4th Cir.1992), and in violation of LDRA's due process rights, purportedly revoked LDRA's racing license and any and all permits issued to it.

108.

On information and belief, this was done in an attempt to compromise LDRA's standing in the Petition for Declaratory Judgment, Suit #399,563, filed in the 19th JDC on October 19, 1993 by LDRA regarding the constitutionality of R.S. 4:211(5) which contained a restrictive definition limiting OTB rights only to those associations existing in 1986-87 and thereby denying any new association OTB rights.

109.

Immediately following the LSRC's action, Terrence Lee Odom filed a subsequent motion alleging that LDRA's permit was revoked and therefore the election was null and void.

110.

On April 29, 1994 at 11:24 a.m., immediately following the LSRC's purported revocation of its license, LDRA filed a Petition for Trial De Novo and for Suspensive

Appeal of the LSRC decision in Livingston Parish, Suit #71,137. The LSRC filed an Exception of Improper Venue in this suit, which was denied by the trial court and the First Circuit Court of Appeal in a unanimous decision. However, the Louisiana Supreme Court granted LSRC's writ application and reversed the trial court and the First Circuit, sustaining the exception of improper venue and transferring the case to the Civil District Court for the Parish of Orleans. On June 16, 1995 the Louisiana Supreme Court denied LDRA's request for rehearing. The LSRC let this suit lie idle until LDRA pursued the trial on the merits of the declaratory judgment suit in 19th JDC, regarding the constitutionality of the restrictive definition contained in LSA-R.S. 4:211(5).

111.

At the April 29, 1994 LSRC meeting, LDRA was denied the right to any of its subpoenas and was denied the right to question any witness or present any evidence on its behalf. LDRA vehemently protested on the record that the LSRC was violating the APA and the Constitution as set forth in Bertucci, supra, nevertheless, the LSRC voted to revoke all licenses/permits issued to LDRA.

112.

Following the LSRC vote, Chairman Tolmas appointed a committee to investigate LDRA. His appointees were Albert Stall, Sue Granger, Peyton Covington and himself. All appointees had displayed a history of opposition to LDRA. Therefore, LDRA cound not expect fair treatment which was in violation of LDRA's procedural due process rights.

113.

On information and belief, these efforts by defendants were designed simply to delay and prevent LDRA from ever providing live racing in Livingston Parish, thereby maintaining the monopoly held by defendants.

114.

The Fair Grounds intervened in the declaratory judgment, Suit #399,563. Fair Grounds filed an amended

and supplemental Petition for Intervention on January 19, 1994. The Fair Grounds filed a Motion for Summary Judgment on January 20, 1994 and an amended Motion for Summary Judgment joined by the defendants on January 24, 1994.

115.

In the Third Extraordinary Session of 1994, the Louisiana Legislature made extensive revisions to the poker gaming laws, R.S. 33:4862.1, et seq.

116.

During the session, the racing industry supported numerous special provisions deemed necessary to increase revenue for purses which is vital to the economic viability of the race tracks' ability to support live racing and to generate revenue for state and local governments.

117.

Act 12 of the session referenced racing associations in R.S. 33:4862.11(5)(a)(b) and R.S. 33:4862.22. Nowhere in Act 12 can any reference be found to R.S. 4:211(5). More specifically, the following language is enacted in R.S. 33:4862.22 (B)(1):

> "(1), Two-thirds of the funds appropriated to the commission pursuant to this Section shall be allocated and provided to the licensed racing associations in the state which conduct live horse racing. . ."

118.

In Act 13 of the session, parts of R.S. 33:4862.11, 33:4862.18, 33:4862.22, and 33:4862.22 addressed special considerations for the racing industry. None of these amendments made any reference whatsoever to R.S. 4:211(5).

119.

During the course of the session two major bills, H.B. 419 and S.B. 35, which emerged from conference committee to become Act 13, were debated in committees and on the floor of the respective bodies.

120.

Representatives of the racing industry drafted and proposed amendments to R.S. 33:4862.4 which would increase the payoff limits for video poker devices located at establishments where live racing is conducted. Testimony by industry representatives urged enactment of these amendments as measures necessary to maintain and increase purses for the horsemen and as being vital to the economic viability of all licensed racing associations.

121.

At all times during committee and floor debate, no proposed language in any amendment to R.S. 33:4862.4 contained the phrase "as defined in R.S. 4:211(5)", therefore indicating that there was no legislative intent to restrict any benefits of the video poker statutes to racing associations licensed prior to the 1986-87 racing season.

122.

When H.B. 419 and S.B. 35 were merged in conference committee, and no public debate was possible, the restrictive phrase "as defined in R.S. 4:211(5)" was added to R.S. 33:4862.4.

123.

On information and belief, the restrictive phrase "as defined in R.S. 4:211(5)" was added to R.S. 33:4862.4 in conference committee by Senator Larry Bankston. Senator Bankston is representing the Krantz family gambling interests as their attorney in various lawsuits seeking to prevent LDRA from entering into competition with his client.

124.

On information and belief, in violation of state law, La.R.S. 42:1112 and 42:1120, Senator Bankston did not file the required disclosure that he was handling legislation on behalf of his clients, the Krantz family gambling interests.

125.

On information and belief, the restrictive phrase "as defined in R.S. 4:211(5)" was added to R.S. 33:4862.4 for the sole purpose of thwarting LDRA's effort to obtain financing

necessary to build its track, thereby perpetuating the illegal monopoly for Senator Bankston's client

126.

The inclusion of the phrase "as defined in R.S. 4:211(5)" in R.S. 33:4862.4 was effected by subterfuge, and clearly is not the expression or the will of the legislature. There is no legitimate public purpose for the inclusion of this restrictive phrase, which is in conflict with all other provisions of the video poker statutes which confer benefits to all licensed racing associations. The effect of this restrictive language actually serves to defeat the intent and purpose of the legislature in providing revenue for purses and assuring the viability of racing associations to provide live racing dates, and to generate revenue for state and local governments, and could result in the closure of another race track.

127.

Honorable Joseph Keogh granted the Fair Grounds' and defendants' Motion for Summary Judgment in the declaratory judgment action, Suit #399,563, on April 18, 1994. LDRA filed an appeal with the First Circuit Court of Appeal on April 28, 1994. On April 7, 1995 the First Circuit Court of Appeal reversed the summary judgment and remanded the case back to the trial court for the taking of additional evidence.

128.

In the meantime, on January 3, 1995 LDRA filed a second petition for declaratory judgment, Suit #413,022 regarding R.S. 33:4862.4.

129.

On information and belief, Larry Bankston who was then chairman of Senate Judiciary Committee B which promulgated all video poker and gaming legislation inserted the restrictive definition contained in R.S. 4:211(5) into R.S. 33:4862.4 which thereby denied LDRA the right to offer increased video poker payoffs (increased from $500.00 to $1,000.00) at its facility.

130.

Declaratory judgment Suits #399,563 and #413,022 were consolidated on April 21, 1995. LDRA tried to advance this litigation as well as its antitrust litigation. These attempts, however, were continually thwarted by the defendants. LDRA was finally successful in advancing Suit #399,563 to trial on May 28, 1995. On information and belief, the defendants continually resisted discovery attempts by LDRA and engaged in an abuse of the legal system in vain attempts to delay these proceedings.

131.

The Louisiana Horsemen's Benevolent and Protective Association 1993, Inc. intervened on behalf of LDRA in Suits #399,563 and #413,022.

132.

On or about October, 1995 LDRA filed a Motion to Compel documents propounded by LDRA to the LSRC in Suit #413,022. It was at this time that Melinda Tucker finally transferred the license revocation suit from Livingston Parish to Civil District Court for the Parish of Orleans. This suit was originally docketed as Suit #95-15331, Division "J," Civil District Court for the Parish of Orleans. Ms. Tucker again allowed this suit to lie dormant until March of 1996. When it became apparent to Ms. Tucker that her delaying tactics would not succeed in thwarting discovery, nor would the flurry of exceptions filed by the Fair Grounds keep this case from going to trial, she initiated activity on the CDC litigation. On March 1, 1996, Mr. Salvador Anzelmo, current counsel for the Fair Grounds and counsel for the Fair Grounds in Suit #92-20961, on March 1, 1996, initiated and obtained an *ex parte* transfer of this action to Division "G" in hopes of attaining a more favorable forum for his client's interests. This is the same exact scenario, same cast of players, that was enacted when the Fair Grounds attempted to revoke LDRA's permit in the hopes of stopping the referendum election in Livingston Parish from being conducted. This attempt was unsuccessful. This case, Suit

#95-15331, was consolidated with Suit #92-20961 which was closed. On April 4, 1996, defendant filed a Motion to Dismiss and Alternatively a Motion for Declaratory Judgment.

133.

The declaratory judgment action, Suit #399,563 was proceeding to its scheduled trial date of May 28, 1996. Ms. Tucker, in an effort to delay those proceedings, tried to advance the CDC proceedings. On May 15, 1996 the Orleans trial court dismissed LDRA's case with prejudice. LDRA immediately filed writs with the Fourth Circuit Court of Appeal which granted LDRA's stay request on May 23, 1996. The Fourth Circuit, on June 5, 1996 granted certiorari and under its supervisory jurisdiction reversed the judgment of the trial court and remanded the case to the trial court for further proceedings under R.S. 4:158. Ms. Tucker and the Fair Grounds desperately tried to use the Orleans litigation to compromise LDRA's standing in the declaratory judgment suit. All of these efforts, upon information and belief, were simply to prevent LDRA from ever providing live racing in Livingston Parish and thereby maintain the monopoly held by the defendants.

134.

After the LSRC voted to revoke LDRA's license, several commission members, including some defendants, stated publicly that the horsemen needed live racing dates and if LDRA could demonstrate it had financing they would favor LDRA's application for a license. Chairman Tolmas specifically stated on the public record that if financing was obtained that he would do everything in his power to restore the license.

135.

In November of 1994 LDRA obtained a $10 million written commitment for financing of its race track. LDRA then requested that the consideration of its racing license be placed on the agenda for the December 2, 1994 LSRC meeting. Chairman Tolmas refused to place the matter on

the agenda, citing as the reason that the litigation over the purported license revocation was still pending.

136.

At the December 2, 1994 LSRC meeting Al Ransome, Chairman of LDRA, attempted to place into the record its commitment to finance its race track. Chairman Tolmas refused to allow Mr. Ransome to be recognized stating that he was not on the agenda.

137.

Due to the refusal of the LSRC to consider the issue, LDRA's lender withdrew the $10 million commitment to finance the race track.

138.

At the same December 2, 1994, there was no item listed on the agenda referencing Old Evangeline Downs, L.C. On motion of Commissioner Albert Stall, the LSRC suspended the rules and considered the request for a racing license by Old Evangeline Downs L.C.

139.

On information and belief Old Evangeline Downs had not even filed a written application for a racing license as required by the racing statutes.

140.

The site approved by the LSRC in LDRA's license lies within both the 100-mile live racing radius and in part overlaps the 55-mile OTB radius applicable to Old Evangeline Downs, L.C.

141.

Due to the overlap of the 100-mile radius of both the Fair Grounds and Old Evangeline Downs, L.C., LDRA is only eligible for racing dates that fall between the end of the Old Evangeline Downs, L.C. race meet and the beginning of the Fair Grounds race meet.

142.

Although the LSRC, under the direction of Oscar Tolmas and the advise of Melinda Tucker, refused to even address the issue of LDRA's OTB license since it was an

association licensed subsequent to the 1986-87 racing season, the LSRC granted a new license and transferred the existing OTB license from First Statewide Racing d/b/a New Evangeline Downs to Old Evangeline Downs, L.C. on December 2, 1994. On information and belief Old Evangeline Downs, L.C. was organized on October 22, 1994 subsequent to the 1986-87 racing season.

143.

All of these efforts, upon information and belief, in violation of LDRA's equal protection rights, were simply to prevent LDRA from ever providing live racing in Livingston Parish and thereby maintain the monopoly held by the defendants.

144.

Although LDRA filed and was granted a suspensive appeal on April 29, 1994 of the LSRC's purported revocation of its license, the LSRC has refused to recognize LDRA as a licensed racing association and has continually ignored or refused its request to be put on the agenda to hear its application for racing dates as required by law, thereby denying LDRA due process and equal protection under the United States Constitution.

145.

All of these efforts, upon information and belief, were simply to prevent LDRA from ever providing live racing in Livingston Parish and thereby maintain the monopoly held by the defendants.

146.

At the December 14, 1995 LSRC meeting the LSRC, in violation of state law, its own rules and the Administrative Procedures Act, considered an item to permit unlimited simulcast of out of state races under the provisions of La.R.S. 4:149.2.

147.

Under the motion considered by the LSRC, LDRA would have the same rights to unlimited simulcasts of out of

state races. These rights would significantly enhance LDRA's efforts to obtain financing for the race track.

148.

After the close of debate on the matter the LSRC improperly voted on a motion that had been altered to include the restrictive definition contained in La.R.S. 4:211(5), which effectively denied the benefits of the simulcast rule to LDRA, in violation of LDRA's due process and equal protection rights under the U. S. Constitution.

149.

All of these efforts, upon information and belief, in violation of LDRA's equal protection rights, were simply to prevent LDRA from ever providing live racing in Livingston Parish and thereby maintain the monopoly held by the defendants.

150.

Under the LSA-R.S. 4:141 the stated objectives of the statutes is to promote and development the racing and breeding industry and the building of race tracks in the State. Pursuant to this statute the LSRC is charged with the responsibility of carrying out the purposes of the statute.

151.

On information and belief, Albert Stall was appointed Chairman of the LSRC by the newly elected Governor of the State of Louisiana on or about May, 1996.

152.

On information and belief, former Chairman Oscar Tolmas was re-appointed to the LSRC by the newly elected Governor of the State of Louisiana on or about May, 1996.

153.

On information and belief, Payton Covington was re-appointed to the LSRC by the newly elected Governor of the State of Louisiana on or about May, 1996.

154.

In accordance with LSA-R.S. 4:158 on Tuesday, August 13, 1996, via Federal Express, LDRA filed its application for 1997-98 race dates and requested that its

application be placed on the agenda for the August 30, 1996 LSRC meeting agenda.

155.

LDRA had previously submitted $10,000.00 in deposits to the LSRC with previous applications which the LSRC refused to place on the agenda. Since these dates were now moot, LDRA requested that the LSRC apply one of the $5,000.00 deposits previously submitted to its new application for 1997-98 race dates pursuant to LSA-R.S. 4:161(B).

156.

Albert M. Stall, Chairman of the LSRC, without a meeting or vote of the full commission directed Paul A. Bonin, Assistant Attorney General assigned to the LSRC, to notify LDRA that its "letter and its attachments cannot be accepted as an application for a license to conduct a race meeting unless and until the cashier's check is received on or before August 15, 1996." This correspondence was faxed to LDRA on Wednesday, August 14, 1996.

157.

On information and belief and as a matter of public record, LDRA's application for racing dates for the 1996-97 race meet requested that the $5,000.00 LDRA deposit from a previous application be applied to the 1996-97 application. The LSRC accepted LDRA's application under these conditions and applied the previous deposit to the 1996-97 application. Likewise, the $5,000.00 deposit for the December 10, 1992 permit was transferred to the application for the 1993-94 application.

158.

LSA-R.S. 4:161(B) clearly states ". . . the **Commission** in its discretion and at the request of the licensee, may return the fees paid by the licensee for racing upon such days or specify any other days which may replace the days omitted." Chairman Stall without benefit of a full meeting of the commission or a full vote of the commission acted arbitrarily and capriciously in denying LDRA's request.

159.

LSA-R.S. 4:161(B) provides:

"When the race meeting for which the license is granted is terminated and the licensee has fully paid the percentage designated in this Part, the five thousand dollars deposited with the application **shall** be returned."

160.

The race meetings for which LDRA had supplied the previous $10,000.00 deposits were terminated. Since the race days were not run there was no percentage due under this Part, therefore, LDRA was and is entitled to return of its deposits.

161.

Pursuant to Chairman Stall's request, LDRA sent to the LSRC office on Wednesday, August 14 1996, via Federal Express, a cashier's check in the amount of $5,000.00 payable to the Secretary of the Louisiana Department of Economic Development.

162.

This check was received in the LSRC office on Thursday, August 15, 1996. On information and belief, Chairman Stall forced LDRA to deposit the additional $5,000.00 with the clear intention of confiscating the deposit through violations of rules and statutes as clearly demonstrated in the actions described in the following paragraphs.

163.

On information and belief and as a matter of public record, LDRA's deposit submitted with the application for the 1993-94 meet was illegally and improperly confiscated, thereby depriving LDRA of its property in violation of LDRA's constitutional right to due process.

164.

On Wednesday, August 14, 1996, LDRA requested that its deposits, totaling $10,000.00 be returned by the LSRC. LDRA had previously been informed by the

Executive Director of the LSRC, Paul Burgess, that pursuant to LSA-R.S. 4:161(B) this refund must be approved by the full commission in open meeting. Therefore, LDRA requested that the return of its deposits be placed on the agenda for the August 30, 1996 LSRC meeting to be heard by the full commission.

165.

On Friday, August 16, 1996 at 11:10 a.m. LDRA received correspondence via facsimile from Paul Bonin, Attorney for the LSRC, which stated in part:

> "LDRA does not have any funds on deposit with the LSRC. The $5,000 deposit for the 1993/94 race meeting has been transferred to the General Fund and is no longer in escrow or "on deposit". The remaining $10,000 deposits for the 1994/95 and 1995/96 applications for race meetings were made payable to the Secretary of the Department of Economic Development and are in escrow with the State as is the most recent deposit of $5,000 for the pending application for the 1997/98 race meeting.
>
> . . .
>
> For the foregoing reasons there is opposition to the request for the refund of the deposit of $5,000.00 for the 1994/95 race meeting.
>
> . . .
>
> Opposition to the refund for the deposit of $5,000 for the 1995/96 arises from the possibility that the Commission may decide to order that deposit applied to set-off minimum license fees owed by LDRA for the 1993/94 and 1994/95 race meetings."

166.

On Friday, August 16, 1996 at 11:38 a.m. LDRA received via facsimile a Rule to Show Cause issued by the Louisiana State Racing Commission signed by Paul Burgess, Executive Director. The Rule to Show Cause orders LDRA to show cause on the 30th day of August at the LSRC open meeting why it should not be ordered to pay the minimum

license fees as set forth in the rule not later than September 30, 1996.

167.

The LSRC in its Rule to Show Cause cited LSA-R.S. 4:161(C) and/or R.S. 4:161.2(C) which provide "the minimum license fee shall be one thousand dollars per day, except for race meetings exclusively for quarter horses, for which the minimum license fee shall be five hundred dollars per day."

168.

The rule further stated that since LDRA requested and obtained dates for race meetings which were not exclusively for quarter horses it would impose the full one thousand dollars per day fee.

169.

The LSRC further claimed that "the reason for not conducting racing on the granted days was not impossibility for any reason beyond the control and through the fault of LDRA."

170.

The LSRC claims the "sole reason, it appears, for failing to conduct racing on the granted days is the failure of LDRA to construct its race track in a timely fashion. . ."

171.

LDRA requested and obtained 105 days for a race meeting covering a period from September 5, 1993 through March 23, 1994. LDRA did not conduct any races on any of the 105 days.

172.

LDRA on October 12, 1993 requested that these dates be canceled, however, the LSRC refused to place this item on its agenda for hearing at its December 3, 1993 meeting and therefore took no action at that time or any time thereafter.

173.

LDRA requested and obtained 109 days for a race meeting covering a period from September 7, 1994 through

March 26, 1995. LDRA did not conduct any races on any of the 109 days.

174.

The LSRC claims that LDRA's failure to conduct races on the 109 days was not impossibility for any reason beyond the control or through the fault of LDRA. However, on April 29, 1994, without any prior hearing, the LSRC purportedly revoked LDRA's racing license.

175.

LDRA applied for 115 racing days covering the period September 6, 1995 through March 21, 1996, which application was not heard and therefore never granted by the LSRC.

176.

The LSRC in its Rule to Show Cause lists LDRA's Summary of Indebtedness as follows:

> "17. For the 1993/94 race meeting, LDRA owes a balance of $100,000.00, after the application of the $5,000.00 deposit;
>
> 18. For the 1994/95 race meeting, LDRA owes a balance of $109,000.00, however there is a deposit in escrow of $5,000.00 available for set-off, which would reduce the outstanding minimum license fee for the 1994/95 race meeing to $104,000.00 when the deposit is transferred from escrow to the General Fund;
>
> 19. There remains an additional $5,000.00 deposit in escrow for the 1995/96 race meeting applied for which no license was ever granted.
>
> 20. If all deposits in escrow (except for the $5,000.00 deposit for the 1996/97 race meeting for which there is a pending application) were applied to the outstanding overall indebtedness arising from LDRA's failure to pay its <u>minimum</u> license fees, LDRA would then owe the State of Louisiana $199,000.00 in unpaid minimum license fees."

177.

On information and belief, Chairman Stall, under color of state law, issued this rule against LDRA with malice of forethought solely to harass LDRA and thwart any opportunities LDRA may have to finance its project.

178.

On information and belief, the action of Chairman Stall is unprecedented in the history of the LSRC.

179.

The LSRC has routinely issued new racing associations racing dates prior to construction of the racing facility in order to enable the association to secure financing for the development.

180.

On information and belief, the LSRC issued racing dates to Sawyer Downs, the predecessor of Louisiana Downs, for approximately three years prior to this association ever conducting its first live race day.

181.

On information and belief, the LSRC did not attempt to or fine either Sawyer Downs or Louisiana Downs for failure to conduct assigned race dates.

182.

On information and belief, the LSRC issued a racing permit and license to Lindsey Downs to conduct live race days prior to the construction of its racing facility.

183.

On information and belief, the LSRC issued racing dates to Lindsey Downs, prior to this association ever conducting its first live race day.

184.

On information and belief Lindsey Downs never conducted a live race meet.

185.

On information and belief, the LSRC did not attempt to fine or fine Lindsey Downs for failure to conduct live race dates.

186.

On information and belief, the LSRC issued a racing permit and license to Clarence Downs to conduct live race meets.

187.

On information and belief, the LSRC issued racing dates to Clarence Downs.

188.

On information and belief, Clarence Downs did not conduct racing on every day that it was approved to do so by the LSRC.

189.

On information and belief, the LSRC did not attempt to fine or fine Clarence Downs for failure to conduct live race dates.

190.

Effective June 17, 1995, Act 460 of the 1995 Louisiana Regular Session became effective which was enacted "to amend and reenact 4:161(C) and 161.2(C), relative to race meetings; to remove minimum license fees for conducting race meetings; and to provide for related matters." This act is remedial.

191.

On Friday, August 16, 1996 at 12:02 p.m. via facsimile LDRA received a notification from the LSRC which read:

> By virtue of La. R.S. 4:153(1), (3) and (4), you are hereby notified that on Monday, August 26, 1996 beginning at 1:00 p.m. the Commission's Chief Auditor, Mr. Sidney E. Schmitt, accompanied by not more than three employees of the Commission, will commence a preliminay examination of the books, financial statements, memoranda, or other documents of Livingston Downs Racing Association, Inc."

192.

The letter from the LSRC went on to identify seventeen different categories of documents that it demanded LDRA to produce.

193.

On information and belief, this is unprecedented in the history of the LSRC.

194.

The seventeen categories of documents the LSRC identified to be produced by LDRA for the examination, inspection and copying are: "(1) federal and state income tax returns and reports for the years 1993, 1994 and 1995; (2) the corporate minute book(s) containing all minutes and resolutions of the association since its inception; (3) any and all financial audits of the association performed by a Certified Public Accountant since its inception through the present; (4) all bank accounts of the association, including but not limited to all canceled checks, stub records, and monthly bank statements; (5) all credit card records for expenses claimed by Livingston Downs Racing Association, Inc., including but not limited to supporting documentation for expenditures claimed on such credit cards; (6) any and all business plans adopted by the association; (7) copies of any mortgages or counter-letters not of public record regarding the property identified in the association's license; (8) any and all building permits and/or construction contracts for the facilities constructed on or to be constructed on the property identified in the association's license; (9) records of any and all lease or mortgage payments by the association or on its behalf for the property identified in its lease; (10) copies of all notes payable identified in the association's financial statement contained in its application for a 1997/98 race meeting; (11) any other documents necessary to verify information contained in that financial statement as may be requested by the Chief Auditor; (12) all records regarding building depreciation; (13) any and all appraisals of the property identified in the association's license, and (14) all

insurance premiums paid for protection of or insuring of assets of the association; (15) any and all applications for loans submitted to any prospective lender, (16) copies of any and all tax assessments and tax liens, if any, on any and all movable and immovable property of the association, (17) any and all documents pertaining to the wetlands stauts of the property identified in the association's license."

195.

On information and belief, Chairman Stall, under color of state law, arbitrarily and capriciously caused this demand to be issued with malice of forethought solely for the purpose of harassing LDRA and thwart any opportunities LDRA may have to finance its project.

196.

On information and belief, the LSRC did not conduct any audit whatsoever regarding Lindsey Downs.

197.

On information and belief, the LSRC did not conduct any audit whatsoever regarding Clarence Downs.

198.

The LSRC allowed Jefferson Downs to voluntarily close in 1992, thereby breaking its 10-year contract with the LSRC to conduct live racing dates.

199.

On information and belief, although the horsemen requested an audit, the LSRC did not conduct any audit of Jefferson Downs whatsoever.

200.

On information and belief, First Statewide Racing d/b/a Evangeline Downs filed bankruptcy in 1993.

201.

On information and belief, the LSRC did not conduct any audit of Evangeline Downs whatsoever.

202.

Although the Fair Grounds received a tax break from the Louisiana Legislature in the amount of two and one-half

million dollars it has not completed construction on its facility after a fire destroyed it in 1993.

203.

On information and belief, the LSRC did not conduct any audit of Fair Grounds whatsoever.

204.

On information and belief, the LSRC's ***actions are in violation of LSA-R.S. 4:147(6).***

205.

LSA-R.S. 4:147 provides in pertinent part:

> "The commission shall carry out the provisions of this Part, including the following specific duties:
>
> . . .
>
> (6)To make rules and regulations for the holding, conducting, and operating of all race tracks, race meets, and races held in Louisiana, provided such regulations are uniform in their application and effect."

206.

On Friday, August 16, 1996, LDRA requested that the LSRC reschedule its audit due to a scheduling conflict. On August 26, 1996, the date arbitrarily scheduled by the LSRC, LDRA had a hearing with the LSRC scheduled in the 19th JDC regarding Suit #399,563. Furthermore, pursuant to LSA-C.C.P. Arts. 1461 and 1462 had not provided adequate notice.

207.

On Monday, August 19, 1996 at 4:46 p.m. LDRA received correspondence from the LSRC via facsimile refusing the request.

208.

On information and belief, Chairman Stall, under color of state law, arbitrarily and capriciously caused this refusal to be issued with malice of forethought solely to harass LDRA.

209.

On information and belief, Chairman Stall is attempting to use this so-called audit as a means of discovery in the license revocation suit pending in the CDC, Parish of Orleans, Suit #95-15331, and further, to deny LDRA's application for race dates for 1997-98.

210.

On information and belief, Chairman Stall is also attempting to use this so-called audit as a means of discovery of specific items that the LSRC, Fair Grounds and the State of Louisiana were denied in Suit #399,563, 19th JDC, East Baton Rouge Parish, in violation of the protective order issued by the court in that case.

211.

On information and belief, Chairman Stall, under color of state law, is arbitrarily and capriciously with malice of forethought using his position to embarass LDRA and to discover LDRA's proprietary information to be used to the detriment of LDRA at the August 30, 1996 LSRC meeting.

212.

On information and belief, the LSRC's action and more particularly, those of Chairman Stall are arbitrary and capricious and specifically calculated with malice of forethought to thwart any financing effort by LDRA for its race track development. On information and belief, the actions against LDRA are in violation of state law and effectively violate LDRA's right to due process and equal protection of the laws.

213.

On information and belief, the present LSRC Chairman, Albert Stall, is acting under color of state law, in violation of state law, arbitrarily and capriciously to further the interests of Fair Grounds to the detriment of LDRA.

Count I

Claims under 42 U.S.C.A. §1983, 1985(2) and (3) and 1986.

214.

All previous paragraphs are realleged by reference.

215.

42 U.S.C.A. 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

216.

42 U.S.C.A. 1985(2) provides:

"If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on accout of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to

enforce, the right of any person, or class of persons, to the equal protection of the laws;"

217.

42 U.S.C.A. 1985(3) provides:

"If two or more persons in any State or Territory conspire or go in disguise on the highway or premises of another, for the purposes of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

218.

42 U.S.C.A. 1986 provides:

"Every person who, having knowlege that any of the wrongs conspired to be done, and mentioned in

section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence cound have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

219.

Defendants are liable to LDRA for damages, costs and attorney's fees pursuant to 42 U.S.C.A. §1983, 1985 (3), 1986 for their actions described above in conspiring to and in denying LDRA due process and equal protection afforded by the Fourteenth Amendment of the United States Constitution regarding its licensing including the purported revocation of its license.

Count II

Anti-Trust Claims

220.

All previous paragraphs are realleged by reference.

221.

15 U.S.C.A. 1 provides in pertinent part:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."

222.

The above described facts demonstrate an attempt thus far successful by the defendants to create a monopoly in the horse racing industry within the relevant market, all in violation of federal anti-trust law.

223.

Defendants are liable to LDRA for damages, treble of such damages, costs and attorney's fees pursuant to federal anti-trust laws, and in particular, 15 U.S.C.A. §15 for their actions described above.

WHEREFORE, plaintiff, Livingston Downs Racing Association, Inc., prays that after due proceedings be had, that judgment be rendered in favor of Livingston Downs Racing Association, Inc. and against the defendants, Jefferson Downs Corporation, Fair Grounds Corporation, Inc., Finish Line Management, Inc., Bryan Krantz, Marie Krantz, Karen J. Thomas, Terrence Lee Odom, Committee to Control Gambling, Peter Henry, George Boudreaux, Oscar J. Tolmas, Albert Stall, Payton Covington, Melinda M. Tucker, Larry Bankston, James Ben Thomas and W. C. Littleton for damages, treble of such damages, appropriate injunctive relief, reasonable attorney's fees, all costs of these proceedings and all other general and equitable relief available.

Respectfully submitted:

Darlene S. Ransome
Bar Roll #21983
5353 Florida Boulevard
Baton Rouge, LA 70806
(504) 928-2620

AND

BREAZEALE, SACHSE & WILSON, L.L.P.
23rd Floor, One American Place
P. O. Box 3197
Baton Rouge, LA 70821-3197
(504) 387-4000

/s/ Jude C. Bursavich
Victor A. Sachse, III, Bar Roll #11645
Claude F. Reynaud, Jr., Bar Roll #11197
Jude C. Bursavich, Bar Roll #19303

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

LIVINGSTON DOWNS RACING ASSOCIATION, INC.

CIVIL ACTION

VERSUS
NO.

JEFFERSON DOWNS CORPORATION, FAIR GROUNDS CORPORATION, INC., FINISH LINE MANAGEMENT, INC., BRYAN KRANTZ, MARIE KRANTZ, KAREN J. THOMAS, TERRENCE LEE ODOM, COMMITTEE TO CONTROL GAMBLING, PETER HENRY, GEORGE BOUDREAUX, OSCAR J. TOLMAS, ALBERT STALL, PAYTON COVINGTON, MELINDA M. TUCKER, LARRY BANKSTON, JAMES BEN THOMAS AND W. C. LITTLETON

VERIFICATION

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public, duly commissioned in and for the parish and state aforesaid, personally came and appeared:

AL J. RANSOME
PRESIDENT AND CHAIRMAN OF THE BOARD OF
LIVINGSTON DOWNS RACING ASSOCIATION, INC.

who, after being duly sworn, did depose and state:

That he is President and Chairman of the Board of Livingston Downs Racing Association, Inc.

That he has read the foregoing Complaint for Damages and Demand for Trial by Jury; and

That all of the allegations contained therein are true and correct to the best of his knowledge, information and belief.

/s/ Al J. Ransome
Al J. Ransome

SWORN TO AND SUBSCRIBED before me this 30 day of August, 1996.

/s/ Darlene S. Ransome
Notary Public

LOUISIANA STATE RACING COMMISSION

MEETING OF THE LOUISIANA STATE RACING COMMISSION HELD ON WEDNESDAY, SEPTEMBER 26, 1998 AT 11:00 A.M. AT LOUISIANA DOWNS RACE TRACK, COURT YARD BUILDING, 8000 EAST TEXAS STREET, BOSSIER CITY, LOUISIANA

REPORTED BY: SYLVIA C. PASTRANO
CERTIFIED SHORTHAND REPORTER

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CERTIFIED
A TRUE COPY

/s/ no signature
Executive Director
Louisiana State Racing Commission

. . .

[60]

MR. STALL:

You want to poll the commission, make sure we have the right--Just call for a vote. All in favor say aye.

COMMISSION MEMBERS:

Aye.

MR. STALL:

All opposed? (None) Deal is on.

MR. MEAUX:

Mr. Chairman, I make a move we go into executive session to discuss pending litigation.

MR. COVINGTON:

Second.

MR. STALL:

All in favor say aye.

COMMISSION MEMBERS:

Aye.

MR. STALL:

All opposed? (None)

(There was executive session.)

MR. MEAUX:

Mr. Chairman, I move to come out of executive session.

MR. STALL:

[61]

Do we have to get a second?

MR. COVINGTON:

Second.

MR. STALL:

All in favor say aye.

COMMISSION MEMBERS:

Aye.

MR. TOLMAS:

Mr. Chairman, make a motion that we adjourn.

MR. COVINGTON:

Second.

MR. STALL:

All in favor say aye.

COMMISSION MEMBERS:

Aye.

[62]

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CERTIFICATE

I, the undersigned reporter, do hereby certify that the above and foregoing is a true and correct transcription of the stenographic notes of the proceedings herein, taken down by me and transcribed under my supervision, at the time and place hereinbefore noted, in the above-entitled and -numbered cause(s).

I further certify that the witness(es) was duly sworn by me in my capacity as Certified Court Reporter for the State of Louisiana; that I am not of counsel nor related to any of the counsel or any of the parties, nor in the employ of any of them, and that I have no interest in the outcome of this action(s).

/s/ Sylvia C. Pastrano

Sylvia C. Pastrano